

CP12/9***

Financial Services Authority

Consumer redress scheme in respect of unsuitable advice to invest in Arch cru funds

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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 31 July 2012.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12-09-response.shtml.

Alternatively, please send comments in writing to:

Cosmo Gibson
Conduct Policy Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 7630
Fax: 020 7066 7631
Email: cp12_09@fsa.gov.uk

It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

ACD	Authorised Corporate Director
APCIMS	Association of Private Client Investment Managers and Stockbrokers
BNYM	BNY Mellon Trust and Depositary (UK) Limited
CBA	Cost benefit analysis
CFM	Capita Financial Managers Limited
COB	Conduct of Business rules
COBS	Conduct of Business Sourcebook
CP	Consultation paper
FOS	Financial Ombudsman Service
FSA	Financial Services Authority
FSMA	Financial Services & Markets Act 2000
HSBC	HSBC Bank plc
IFA	Independent Financial Adviser
IMA	Investment Management Association
ISA	Individual Savings Account
NAV	Net Asset Value
NURS	Non-UCITS Retail Scheme

OEIC	Open-Ended Investment Company
PII	Professional indemnity insurance
RPPD	Responsibilities of Providers and Distributors for the Fair Treatment of Clients

1

Overview

Summary of proposals

- 1.1 Many consumers who invested in the Arch cru funds¹ suffered losses as a result. We have reviewed sales files from a sample of firms that advised consumers to invest in the funds and have concluded that there was widespread mis-selling.
- 1.2 We have considered the options available to provide redress to consumers who were mis-sold. We propose to make a consumer redress scheme that requires firms that made a personal recommendation to consumers to invest in these funds to review relevant sales, identify the sales that were unsuitable, and pay redress to consumers where required. We believe that this is the most desirable option because it has the potential to provide redress to the greatest number of consumers.
- 1.3 We estimate that the proposed scheme could deliver £110m in redress to between 15,000 and 20,000 consumers. The exact amount of redress will depend on firms' responses and prevailing market conditions.
- 1.4 We have developed a template that firms would have to follow to determine if sales were unsuitable and intend to develop an online calculator that firms should use to determine any redress payable to consumers. Firms will have to report on the progress of their reviews so we can monitor firm-specific and overall compliance with the scheme. We estimate that the costs of the scheme will total £6m to £11m.
- 1.5 The consumer redress scheme follows the agreement reached by a number of parties involved in Arch cru funds to make £54m available to investors who remained invested in the funds as of 31 May 2011.

Structure of this document

- 1.6 Chapter 2 of this paper sets out the background to the Arch cru funds.
- 1.7 Chapter 3 explains why we believe there has been widespread mis-selling of the funds and the options available to provide redress to consumers.

1 The CF Arch cru Diversified Funds and the CF Arch cru Investment Funds.

- 1.8 Chapter 4 explains the proposed scheme.
- 1.9 Annexes contain the cost benefit analysis, compatibility statement, a list of the questions in this paper, a report from a statistician relating to our file review, and the draft Handbook text.

Who should read this Consultation Paper?

- 1.10 This Consultation Paper will be of interest to firms that made personal recommendations in relation to investing in Arch cru funds and to consumers who have invested in Arch cru funds. It will also be of interest to trade bodies and consumer groups. We welcome responses to the questions in this paper.

Equality and diversity considerations

- 1.11 We have assessed the likely equality and diversity impacts of the proposals and do not think that the proposals give rise to any concerns. However, any comments from respondents would be welcome.

Next steps

- 1.12 The consultation will close on 31 July 2012. We intend to publish a Policy Statement, including made Handbook text if approved, in November 2012. Timing for the implementation of our proposals is set out in this CP.

CONSUMERS

If you invested in relevant Arch cru funds then this paper may be of interest to you.

We believe that many people who invested in these funds received unsuitable advice. If this applies to you, we want your adviser to put you in the position you would have been in had you received suitable advice.

Before our scheme comes into force, you can make a complaint to the firm about advice you received to invest in the Arch cru funds, should you wish to do so. If you are dissatisfied with the response of the firm concerned, you can refer your complaint to the Financial Ombudsman Service.

Were you still invested in the Arch cru funds as of 31 May 2011?

If you were invested in the Arch cru funds as of 31 May 2011, you should have been offered a payment from the payment scheme agreed by Capita Financial Managers Limited, HSBC and BNY Mellon Trust and Depositary (UK) Limited.

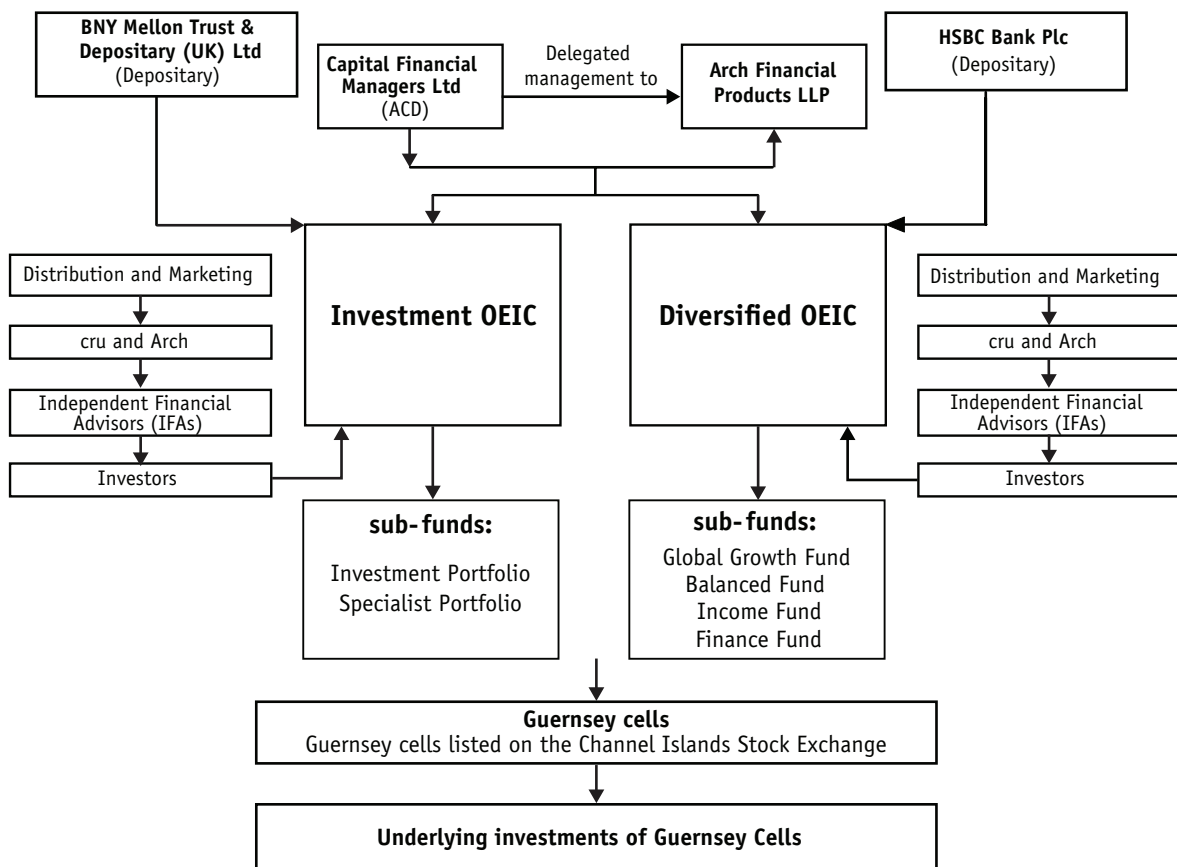
Under the terms of this scheme, you are required to claim by 31 December 2012. If you choose not to claim under the payment scheme by this date, you may lose your entitlement to do so, and you should note that your adviser will not be required to include this amount in the payment we may require them to make. You are automatically entitled to the payment from the payment scheme, but your adviser is only required to compensate you under our proposed scheme if you received unsuitable advice.

2

Background

- 2.1 This chapter sets out the background to the Arch cru funds in terms of their legal structure, the history of their activities up to the date of suspension, and the parties involved. It also discusses the payment scheme agreed by Capita Financial Managers Limited (CFM) and other parties.

Overview of the Arch cru funds²



² Further information on the funds is set out in Annex 9 to the Instructions for our assessment template, as contained in Appendix 1 of this paper, including information on the stated investment strategies of the funds.

- 2.2 The relevant funds for the purposes of this CP are two FSA authorised Open-Ended Investment Company (OEIC) funds, namely the CF Arch cru Investment Funds (the Investment OEIC) and CF Arch cru Diversified Funds (the Diversified OEIC) (collectively, the Arch cru funds), which were suspended on 13 March 2009. Both of the Arch cru funds were Non-UCITS Retail Schemes (NURS), which means they potentially had a broader investment scope than UCITS³ funds, such as the ability to borrow up to certain limits and invest in a wider range of asset classes.
- 2.3 The Arch cru funds invested extensively in the shares of Guernsey incorporated cell companies listed on the Channel Islands Stock Exchange (referred to collectively as the Guernsey cells). The Guernsey cells were closed-ended investment companies that invested in a wide range of private market investments.

The Investment OEIC

- 2.4 The Investment OEIC was authorised on 29 June 2006. Capita Financial Managers Limited (CFM) was appointed as Authorised Corporate Director (ACD).⁴ An ACD is the authorised person responsible for operating the funds. This includes, but is not limited to, ensuring the funds comply at all times with the relevant sections of the Handbook, managing the funds' investments, buying and selling the funds' shares on demand, pricing funds' shares and providing regular information to the funds' shareholders. CFM delegated the role of investment manager to a third party, Arch Financial Products LLP (Arch). Cru Investment Management Ltd (cru) was involved in distributing and marketing the funds to IFAs. The Investment OEIC contains two sub-funds (the CF Arch cru Specialist Portfolio and the CF Arch cru Investment Portfolio).
- 2.5 The sub-funds of the Investment OEIC have in total 16 different share classes, including shares with differing income characteristics ('net income shares' and 'net accumulation shares') and sterling and US dollar denominated share classes.

The Diversified OEIC

- 2.6 The Diversified OEIC was incorporated on 20 June 2002 and was originally named the Insinger de Beaufort Manager Selection ICVC.⁵ In September 2007, the ICVC was renamed the CF Arch cru Diversified Funds (i.e. the Diversified OEIC) and CFM became the ACD, and Arch the investment manager. Again, cru was involved in distributing and marketing the funds to IFAs. After this point the Diversified OEIC's assets changed and, like the Investment OEIC, it became heavily invested in the Guernsey cells.
- 2.7 The Diversified OEIC contains four sub-funds (the CF Arch cru Balanced Fund, the CF Arch cru Income Fund, the CF Arch cru Global Growth Fund and the CF Arch cru

³ Undertakings for collective investment in transferable securities that are established in accordance with the UCITS directive.

⁴ The functions of an ACD are described in COLL 6.6.3R and the appointment process is described in COLL 6.5.3R.

⁵ Investment company with variable capital.

Finance Fund). The CF Arch cru Finance Fund was launched on 21 October 2008; the other three funds were all re-launched on 24 September 2007 following the change of ACD.

- 2.8 The sub-funds of the Diversified OEIC have in total seven different share classes, including shares with differing income characteristics ('net income shares' and 'net accumulation shares').

Fund suspension

- 2.9 CFM, as ACD of the Investment OEIC and the Diversified OEIC, wrote to shareholders on 13 March 2009 to advise that dealings in the shares of the Arch cru funds were suspended with immediate effect (following discussions with the depositories for the Arch cru funds). During the suspension no requests to redeem, purchase or transfer shares in the Arch cru funds would be accepted, except for those considered for acceptance under a hardship scheme set up for investors by CFM.
- 2.10 Dealings in the Arch cru funds were suspended because it was anticipated that there was potentially insufficient liquidity in the CF Arch cru Investment Portfolio to meet anticipated redemptions. Dealings in the other sub-funds of the Investment OEIC and of the Diversified OEIC were suspended at the same time because they shared a similar asset and investor profile and because there was a concern that the suspension of one sub-fund might result in a significant and unsustainable increase in redemptions in the other sub-funds.
- 2.11 At the time of suspension, the Net Asset Value (NAV) of the Arch cru funds, based on the last published prices of the underlying Guernsey Cells, was approximately £362.7m. The Arch cru Investment Portfolio was the largest of all the sub-funds at approximately £231.8m. According to the shareholder register, there were approximately 6,000 investors in the Arch cru funds at the date of suspension, although many of these were nominee holdings for multiple underlying investors.
- 2.12 The investment manager of the Arch cru funds and the Guernsey cells was changed in December 2009 to CFM and Spearpoint Limited respectively. Both the Arch cru funds and the Guernsey cells are now being wound-down with a view to returning the remaining value of the scheme property to investors. When the orderly realisation of the Arch cru funds was announced by CFM in December 2009, it anticipated that this would likely take between three and five years.

Valuation of the Arch cru funds post-suspension

- 2.13 Since the suspension of the funds, to date approximately £96.3m has been distributed by CFM to investors through five interim capital distributions on 28 February 2010, 30 July 2010, 23 December 2010, 26 July 2011 and 14 December 2011. Following the most recent distribution, the residual NAV of the Arch cru funds was stated by CFM as being approximately £83m.

- 2.14** These interim capital distributions are made when assets within the Arch cru funds are sold and cash is returned to the funds. This is passed on to investors through capital distributions. The five interim capital distributions made to date have been paid irrespective of whether or not investors wish to accept an offer under the payment scheme described below.

CF Arch cru payment scheme

- 2.15** On 21 June 2011, we announced a £54m payment scheme for investors who remained invested in the funds at 31 May 2011. This was the result of detailed discussions between the FSA and CFM as ACD of the Arch cru funds, and BNY Mellon Trust and Depository (UK) Limited (BNYM) and HSBC Bank plc (HSBC) as depositaries. The payment scheme was established voluntarily by CFM, BNYM and HSBC.
- 2.16** The payment scheme was set up to provide sums to investors to reduce the difference between the current value of their investments in the Arch cru funds and those investments' value as at the suspension of the funds. Investors applying to the payment scheme are not prevented from seeking redress from parties other than CFM, BNYM, HSBC and their respective groups, although if they accept a payment it is the full and final settlement of any claims against CFM, BNYM, HSBC and their respective groups. Other than in exceptional circumstances, investors have until 31 December 2012 to apply to the payment scheme.
- 2.17** The FSA used its powers under Section 404F(7) of the Financial Services and Markets Act 2000 to require the Financial Ombudsman Service to follow the rules of the payment scheme when assessing complaints concerning the CF Arch cru funds against CFM, HSBC and BNYM for all complaints made to it on or after 31 August 2011.
- 2.18** Letters have been sent to investors explaining the payment scheme and setting out details of how CFM has calculated each investor's share of the £54m package.

3

Evidence of consumer detriment and consideration of regulatory response

3.1 In this chapter we briefly explain the standards that apply to firms providing advice on investments to consumers. We set out our view of the risks to consumers investing in the Arch cru funds, summarise the results of our review of sales files, and estimate the possible losses to consumers as a result of receiving unsuitable advice. We conclude by setting out the options for providing appropriate redress to consumers.

Requirements on financial advisers

3.2 An independent financial adviser (IFA) owes clients a duty to act with the skill and care to be expected of a ‘reasonably competent’ financial adviser. The scope of the duty will depend on: the IFA’s obligations under FSMA and the FSA rules; its terms of business (which may expressly extend or limit these duties); and any duties imposed in common law.

3.3 The skill and care to be expected of a reasonably competent IFA ordinarily includes compliance with the relevant regulatory rules, in particular the Conduct of Business rules, COB and COBS.⁶

The risks of investing in the Arch cru funds

3.4 When reviewing information provided by third parties, including product providers:

- IFAs are under a duty to examine critically the information provided to determine the risks in the investment. Our Responsibilities of Providers and Distributors for

⁶ Conduct of Business rules (in force until 31 October 2007) and Conduct of Business Sourcebook (in force from that date onwards).

the Fair Treatment of Clients (RPPD)⁷ guidance states that when a firm is providing information at or before the point of sale to a customer, it:

- should consider, when passing provider materials to clients, whether it understands the information provided;
 - should ask the provider to supply additional information or training where that seems necessary to understand the product or service adequately; and
 - should not distribute the product or service if it does not understand it sufficiently, especially if it intends to provide advice.
- It will be reasonable for an IFA to rely on information provided to it in writing by a third party in situations where it has taken reasonable steps to establish that the third party providing the information is not connected with the firm and is competent to provide information (COB 2.3, COBS 2.4.6 R and 2.4.7 E).
 - However, it is no defence for an IFA to say that they relied, or were justified in relying, on statements made by a product provider or a third party's opinions about the suitability of an investment. This is because the duty to determine suitability cannot be delegated. It is up to the IFA to determine the risks in the product to assist their judgement.

3.5 It is our view that a firm advising on Arch cru funds (subject to taking the reasonable steps described above) could rely on statements of fact made by third parties (for example, the ACD, investment manager or distributor) but not statements of opinion about the suitability of the investment or the returns it would be likely to achieve. Suitability must be determined in the context of the client's investment objectives, financial situation and knowledge and experience. A firm's determination of suitability must involve judgements about the riskiness of a product. When a firm undertakes due diligence and receives information from a third party or product provider, they must still be satisfied that they understand the product, and have made an independent assessment of its risks.

3.6 In our view a reasonably competent IFA should have realised, based on the information available to it or that it ought reasonably to have gathered, the following:

- The marketing material provided to firms was limited.
- Claims in the marketing material about the overall risk that investors were taking (which was generally portrayed as being 'low' or 'medium') were not consistent with the investment strategy (described as 'absolute returns') and the funds' underlying assets (many of which were non-mainstream assets which generally present a higher risk to invested capital).

⁷ http://media.fsahandbook.info/Handbook/RPPD_20070716.pdf

- The Arch cru funds, through transferable securities, ultimately invested in the following asset classes, in various combinations depending on the fund being described in the material:
 - unlisted equity;
 - unlisted debt instruments;
 - non-UK investments;
 - venture capital or project finance investments;
 - private markets, private equity, private finance;
 - private and structured finance;
 - asset-backed lending;
 - investments in developing countries;
 - collateralised debt and collateralised cash flow financings;
 - life settlements; and
 - commodities.

3.7 In particular, the asset classes listed above have some or all of the following risks associated with them, generally to a higher degree than more mainstream assets such as listed debt or equity:

- Risk to invested capital and return, in general – the risk that the investment may fall in value. This risk is generally higher for the asset classes that the Arch cru funds invested in than for more mainstream assets.
- Exchange rate risk – some of the assets are located overseas, and would therefore be affected by exchange rate movements.
- Credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets.
- Governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply.
- Liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors.
- Valuation risk – assets not traded on a recognised market can be difficult to value accurately.

- 3.8** It is our view that, in all the circumstances, based on the material which an IFA either had or should have had, a reasonably competent IFA should have concluded that these funds were high-risk investments and therefore only have recommended them to consumers who were willing and able to bear this level of risk consistent with their financial situation and objectives, and who had the knowledge and experience to invest in such funds.
- 3.9** If the IFA did not obtain the information it should have, then a reasonably competent IFA could only have concluded that given the lack of detail in the available material, recommending these funds to any investor would not have been suitable.
- 3.10** An investment in these funds would therefore only have been suitable when recommended as a small, high risk portion of an investment portfolio. Any recommendation to invest a significant part of a consumer's available capital would in our view be unsuitable. A recommendation to invest that identified the risk of these funds as lower than or equivalent to the risk of investing in funds containing combinations of more mainstream debt and equity instruments would also, in our view, have been unsuitable.
- 3.11** We do not believe that there was anything in the marketing material that would have given a reasonably competent IFA comfort that either the investment strategy employed or the specific assets invested in would have mitigated these risks and therefore justified the claims that the overall risk level of the funds was low or medium. Furthermore, the Arch cru funds were NURS, meaning that they were able to take on debt, up to certain limits, to fund their investments, which would exacerbate these risks.

Q1: Do you agree with our analysis of the risks of the Arch cru funds and the implications of this for advisers?

Review of sales files

- 3.12** To assess the extent of unsuitable advice, we developed a template and accompanying guidance to assess the suitability of advice to invest in Arch cru funds. The template was designed to assess advised (i.e. not discretionary or 'execution-only') sales of the six sub-funds of the Investment and Diversified OEICS sold to private customers (up to 31 October 2007, when COB was in force) or retail clients (after 31 October 2007, under COBS), as described in Chapter 2.
- 3.13** We appointed external file reviewers to assess:
- whether the recommendation to invest in Arch cru funds was suitable in each case;
 - whether the risks of investing in an Arch cru fund were appropriately disclosed;
 - whether the communication to consumers was clear, fair, and not misleading;

- whether a consumer relied on a firm's personal recommendation, or the information the firm provided (or failed to provide), when he or she invested in an Arch cru fund; and
- in light of this assessment, whether or not the case could be rated as 'suitable', 'unsuitable', or 'unclear'.⁸

3.14 The independent file reviewers we engaged were given training to ensure that they understood the guidance and template. In addition, they were subject to quality assurance checks to verify that, following the training, they were competent to complete the reviews.

3.15 We were careful to ensure that the template and guidance took into account what a reasonably competent firm should have known, given the information they should have obtained in the period when the funds were sold, not what the firm might know now, with the benefit of hindsight.

Sample design

3.16 We asked an external statistician to advise on a sample design for the file review that would deliver results to establish with reasonable certainty:

- the percentage of transactions that involved unsuitable advice; and
- whether unsuitable advice was widespread across firms.

3.17 The proposed design had to produce robust data for the purposes of providing evidence to assist us in making our regulatory judgement, but also be proportionate in terms of the time taken and resource deployed. We identified 795 firms that we believed had sold Arch cru funds. The sampling process applied to these firms resulted in a sample of 24 firms, and we reviewed 179 files provided by those firms.

3.18 The sample design process is described in detail within the statistician's report in Annex 4.

Results

3.19 The files in our sample were reviewed to specifically assess suitability of advice for the sale of the Arch cru funds as detailed. The headline results were that:

- only 22 (12%) sales were found to be suitable;
- 17 sales (10%) were rated as unclear; and
- in 140 sales (78%), the advice was found to be unsuitable.

3.20 Of the 24 sampled firms reviewed:

- 20 were found to have mis-sold in at least 33% of their reviewed sales;

⁸ We permitted this 'unclear' conclusion in our file review because the assessors were not able to obtain any additional information to that contained in the file.

- 19 had mis-sold in at least 50% of their reviewed sales; and
 - 14 firms did not have any sales reviewed as suitable.
- 3.21** Only a small proportion of the firms had cases rated as suitable (14 of the 22 sales rated as suitable were split between just two firms). These firms had generally rated the funds as 'higher' risk. They had also generally treated the funds as being similar to 'absolute returns' or 'alternatives' vehicles and the evidence on file showed that funds of that type were suitable for the consumers concerned.
- 3.22** Of the 140 sales rated as unsuitable, 93% were rated as unsuitable because of a mismatch between the risk the consumer was willing and able to take with this investment (either by itself or as part of a portfolio) and the risks of the fund itself.
- 3.23** Other reasons for unsuitable advice were:
- the sale resulted in the Arch cru fund constituting too great a proportion of the customer's overall invested portfolio;
 - the sale resulted in the customer's overall portfolio being out of balance with the stated investment objectives or risk tolerance of the customer; and
 - the firm's file did not demonstrate that the firm had taken reasonable steps to ensure that the customer had sufficient knowledge and experience to understand the risks inherent within the Arch cru fund.
- 3.24** In 152 of the 179 files reviewed, the firm did not clearly disclose the nature of the non-mainstream assets that were the underlying investments of the Arch cru funds or explain the risks to the consumer's investment. They did not generally discuss the fact that these assets could represent a greater risk to capital than more mainstream asset classes.
- 3.25** In 140 cases, where a firm discussed the potential benefits of an Arch cru fund, they did not provide a balanced description including the risks and disadvantages of investing in non-mainstream assets ultimately invested in by the fund. The firms did not consider the differing information needs of their customers and the information they did provide was limited and insufficiently detailed.
- 3.26** The language used by the firms in describing Arch cru funds to their customers and, as applicable, the due diligence information on the files or provided with the files demonstrated that most firms undertook insufficient due diligence. From the level of non-disclosure of key characteristics of the funds, and risks of investing in the funds, it appears that the majority of firms did not fully understand the risks and features of the Arch cru funds.
- 3.27** Where a sale was found suitable, the advising firm appeared to have undertaken appropriate due diligence to understand what the funds were invested into and recognised the non-mainstream nature of the underlying assets.

3.28 We believe that the file review exercise clearly demonstrates a high level of unsuitable advice and inadequate disclosure by the firms reviewed, as well as a lack of apparent due diligence conducted into the Arch cru funds.

Q2: Do you have any comments on the file review?

Losses suffered by consumers who received unsuitable advice

3.29 To assess the losses suffered by consumers who were unsuitably advised to invest in the Arch cru funds, we considered what investment they would have made if they had received suitable advice. Whether or not a consumer has suffered a loss relative to this alternative suitable investment will depend on when they invested (and disinvested, where relevant).

3.30 We do not have consumer-level data on attitude-to-risk for the entire population of investors. However, based on our file review sample, we have grouped the investors who received unsuitable advice into three broad categories based on the type of investment they would have made if suitably advised on this occasion:

- Consumers who should not have been advised to take any capital risk with their investment – from our sample we estimate that these customers accounted for around 10% of the population. We consider that an appropriate benchmark or comparator for these consumers would have been something achieving a return equal to the Bank of England base rate.
- Consumers who could have been suitably advised to take a small amount of risk with their capital – from our sample we estimate that these consumers accounted for around 56% of the population. The benchmark used is a 50/50 combination of Association of Private Client Investment Managers and Stockbrokers (APCIMS) and Investment Management Association (IMA) indices characterised as ‘cautious’ or ‘conservative’.⁹ This equates to an equity exposure of 20% to 60% in recognised public exchanges.
- Consumers who, if suitably advised, could have taken some amount of risk with their capital – from our sample we estimate that these consumers accounted for around 34% of the population. The benchmark used for these consumers is based on a 50/50 combination of APCIMS and IMA indices characterised as ‘balanced’.¹⁰ This equates to an equity exposure of 40%-85% in recognised public exchanges.

3.31 We do not have access to the complete database of consumer-level data on amounts invested. However, we do have complete information on capital inflows and outflows into the funds at an aggregate level. Based on these inflows and outflows, the individual sales data we have collected to date, and the benchmarks as described above, we have been able

⁹ These are the FTSE APCIMS Conservative Index and the IMA Mixed Investment 20-60% Shares sector. We have extrapolated the APCIMS Conservative Index based on its constituent elements, as it does not cover the relevant period entirely.

¹⁰ These are the FTSE APCIMS Balanced Index and the IMA Mixed Investment 40-85% Shares sector.

to model the difference between the performance over the relevant period of the Arch cru funds and the comparator investments. In estimating the losses that unsuitably advised investors may have suffered in aggregate, we have also taken account of the current Net Asset Value of the Arch cru funds, the distributions paid to investors from the funds to date, and the amounts available to customers under the CF Arch cru payment scheme. The aggregate losses calculated are presented in the table below:

Fund	Losses
Investment Portfolio	£86.8m
Specialist Portfolio	£3.8m
Balanced Fund	£6.9m
Global Growth Fund	£0.8m
Income Fund	£9.2m
Finance Fund	£29.2m
Total	£136.7m

3.32 In relation to these estimates, a number of key assumptions and limitations should be noted:

- We have assumed that the proportion of investors in the funds who were not private customers or retail clients, or not given a personal recommendation, is a constant 2% throughout the relevant period. This assumption is based on data we have gathered from firms.
- We have not taken account of any effect of taxation.
- As set out in Annex 4 (the statistician's report) the proportion of the total amount invested in the funds that was invested as a result of unsuitable advice is estimated at 90%. We have used this estimate in calculating potential losses for the entire population of consumers.
- We have assumed that the timing of the advice has no bearing on the suitability of the personal recommendation – in other words, that unsuitable sales of Arch cru funds were evenly distributed over the relevant period. This reflects information gathered for our file review.
- We have assumed that the proportion of consumer risk profiles and therefore comparator investment types, as set out above, is equally distributed across all Arch cru funds.
- The aggregate amount of loss calculated does not necessarily mean that any individual investor has made a loss, even where they were given unsuitable advice.
- Any loss estimate will necessarily be subject to change because the estimate is based on the value of assets at a point in time and that value will change as markets fluctuate.

- It should be noted that the figures presented above are an estimate of the losses suffered by customers of firms which are not currently in default – we have not included in the analysis consumers who already have claims with the FSCS.

3.33 Based on this analysis, and despite its limitations as set out in paragraph 3.32, it is our view that the aggregate losses suffered by consumers because of unsuitable advice are significant.

Q3: Do you have any comments on our assessment of the losses experienced by consumers as a result of unsuitable advice to invest in Arch cru funds?

Options for obtaining consumer redress

3.34 Given the evidence of consumer detriment, we have considered a number of options to deliver consumer redress.

Option 1: supervisory action on a firm-by-firm basis

3.35 We considered taking supervisory action against firms, for example by imposing a requirement to review sales under s.45 or s.166 of FSMA.¹¹ The advantages of pursuing such action would be that it could be achieved relatively quickly and could be tailored depending on the circumstances of each individual firm.

3.36 This option has two clear disadvantages:

- We could not apply it to all relevant firms, given the large number of firms involved and the resources available to us.
- The distribution of sales of Arch cru funds was not, based on the information available to us, heavily skewed towards a small number of identifiable intermediaries.¹² Taking targeted action against a small number of firms could not therefore deliver a large amount of consumer redress.

Option 2: issue guidance on complaints handling to firms

3.37 We considered issuing guidance to firms, setting out how they should handle complaints about advice to invest in Arch cru funds, combined with a call to action to consumers. This guidance would assist firms in considering the suitability of sales and in conducting root cause analysis of complaints.

¹¹ These powers allow the FSA to require firms to review their practices and then to provide redress to consumers where appropriate, on an individual firm basis.

¹² This relates to the population of firms which are not in default. Some large distributors of Arch cru funds have already defaulted.

- 3.38 This option would be relatively low cost to implement. However, we do not believe that by itself it would deliver a significant level of consumer redress because it relies on consumers bringing complaints to firms for consideration, and experience suggests that the response rate when consumers are called on to complain is usually quite low.

Option 3: reach an agreement with firms

- 3.39 Reaching an individual agreement with a number of firms that advised on the Arch cru funds would have no real advantages in this case, because of the small number of firms with which we could realistically negotiate and the lack of any large distributors. It would also be costly and time-consuming for both firms and the FSA.

Option 4: issue a call to action to consumers

- 3.40 We could simply issue a statement to consumers, based on our evidence of unsuitable advice and consumer losses, advising them to complain. This option would be the cheapest to implement, but is also likely to be limited in effect, for similar reasons as option 2.

Option 5: a s.404 consumer redress scheme as applied to a number of firms

- 3.41 The main benefit of this is that a consumer redress scheme requires firms to review all cases within the scope of the scheme and pay redress where required. It would therefore seem likely to deliver more redress than the alternatives, because it does not depend on consumer action. It is, however, the most costly option to implement. This is discussed in more detail in our cost benefit analysis (see Annex 1), together with the relative costs and benefits of the alternative options.

Q4: Do you agree with our assessment of the options available for delivering consumer redress?

The s.404 power and the tests to be met

- 3.42 Where the conditions in s.404 of FSMA are met, we have the power to make a consumer redress scheme, requiring firms to review their sales and, where relevant, to pay redress to consumers.
- 3.43 Those conditions are, in summary, that:
- it appears to us that there has been a widespread or regular failure by firms to comply with requirements applicable to carrying on an activity (here, providing a personal recommendation in relation to investment in Arch cru funds);

- it appears to us that, as a result, consumers have suffered (or may suffer) a loss which a court would remedy; and
- we consider that such a scheme is desirable for the purpose of securing redress, having regard to other ways in which consumers may obtain redress.

3.44 In the present case, we consider that these conditions are met. We set out our reasons below.

Widespread failure

3.45 In our view, our file review provides strong evidence that there has been a widespread failure by firms to comply with requirements to provide suitable advice in relation to investments in Arch cru funds.

3.46 In addition to this evidence, we are aware that the FOS has received a number of complaints from consumers in relation to sales of Arch cru funds, a significant proportion of which have been resolved in favour of the consumer.¹³

3.47 We have also contacted all firms that we believe sold Arch cru funds, asking them to provide us with information about how they rated the funds, where this information was available. The response is set out in the chart below, and clearly shows that most of the firms providing a risk rating rated the funds in the low, low/medium or medium brackets. We take this as an indication that most of the sales of Arch cru funds by these firms are likely to have been unsuitable. This is based on the 67 firms that included a risk rating in their response.

Risk rating	% of Firms
Low	4%
Low/Medium	46%
Medium	39%
Medium/High	3%
High	7%

Actionable loss

3.49 From the estimates described above, we believe that it is clear that investors have suffered, in aggregate, significant losses as a result of receiving unsuitable advice to invest in Arch cru funds. Our legal analysis is that where a consumer relied on unsuitable advice in making an investment in any of the Arch cru funds, then the consumer should, in principle, be entitled to recover from the adviser the full amount of the loss arising from that investment, regardless of the actions of other parties.

¹³ To date the FOS has received approximately 250 complaints in relation to distributors of Arch cru funds. Of these, around 60 have been passed to the FSCS. Ombudsman determinations have been issued in relation to 40 of the remaining cases, of which 35 were upheld in favour of the consumer, and 5 were rejected. Other cases remain under consideration.

Desirability

- 3.50** We consider it desirable to make rules to secure redress for consumers who were unsuitably advised to invest in Arch cru funds. In particular, we consider that the proposed scheme, as set out in Chapter 4, will deliver a greater total amount of redress to a greater number of consumers than the other available options.
- 3.51** We also consider that the proposed scheme is consistent with our general duties (as set out in Annex 2), as it is the option that delivers the greatest amount of redress and is best suited to delivering against our consumer protection and market confidence objectives. We have had regard to the burdens on firms under our proposed scheme and we consider that these are proportionate to the benefits arising in terms of increased market confidence. Further details of our cost benefit analysis are set out in Annex 1.

Q5: Do you agree with our assessment that the legal tests for making a consumer redress scheme have been met?

4

Consumer redress scheme proposals

Principles and scope

4.1 We have developed a proposed consumer redress scheme based on the following principles:

- Broadly, the scope of the scheme extends to all cases where a firm made a personal recommendation to a consumer in relation to Arch cru funds.
- Firms will be required to consider the position of all their customers who invested in Arch cru funds, to determine first whether they are within the scope of the scheme, and then if they are in scope, whether the advice to invest in Arch cru funds was suitable or unsuitable and whether the consumer relied on that advice to invest in the Arch cru funds. They will then determine whether redress is payable and, where it is, pay consumers.
- Consumers will not need to take action for firms to consider whether or not the firm's advice on the investment in Arch cru funds was suitable, provided that they are within the scope of the scheme. Consumers may, however, need to respond to requests for information where the firm concerned does not hold this information.
- Where consumers are out of scope of the scheme (see below) and believe they were given unsuitable advice or have another reason to complain, then they may choose to take legal action or make a complaint to the firm. Consumers who were invested in the funds on 31 May 2011 should note that the proposed scheme is not an alternative to the CF Arch cru payment scheme, and make a claim on the payment scheme (if they wish to do so) by the 31 December 2012 deadline. The amount a consumer is entitled to receive under the payment scheme will be deducted from any redress due.
- The Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS) will be bound by the scheme: where consumers do not agree with the result obtained from the firm, or disagree with the firm's assessment that the consumer is not within the scope of the scheme, they will be able to refer this to the FOS for consideration. Where a firm is in default, then the FSCS will consider whether

consumers are due redress according to the terms of the scheme. Limits that currently apply to both organisations will also apply when they apply the scheme.¹⁴

- We have discussed our proposals with the FOS, FSCS, Financial Services Consumer Panel, Financial Services Practitioner Panel, and the Smaller Businesses Practitioner Panel. We have not consulted more widely ahead of publishing this paper, because we were concerned to maintain the confidentiality of our proposals. We will actively seek the views of consumer representatives and trade associations as part of the consultation process.

- 4.2 We propose that the scheme will apply to all firms that provided a personal recommendation to relevant consumers during the relevant period, including firms that were authorised by the FSA at the time but have since had their permissions cancelled. This includes branches of EEA firms operating under a passport in the UK. The scheme will also apply to anyone who has assumed a liability of a firm in respect of a failure to provide suitable advice in relation to Arch cru funds.
- 4.3 ‘Execution-only’ sales, investment as part of a discretionary management arrangement, and failures to provide advice to disinvest from Arch cru funds (where this might have been required as part of an ongoing arrangement) are not within the scope of our proposed scheme. Nor are those consumers who have already referred a complaint to the FOS about advice on an Arch cru fund, or accepted full and final settlement of a claim relating to such advice.
- 4.4 Relevant consumers are those who were, at the time of the advice, a private customer for the purposes of the Conduct of Business rules (COB) or a retail client for the purposes of the Conduct of Business Sourcebook (COBS).
- 4.5 The steps required under our proposed scheme rules must be taken or supervised by someone of appropriate experience or seniority. Where applicable, this should be the person appointed by the firm to oversee complaints handling.¹⁵
- 4.6 Our rules set out a series of steps to determine whether the law of a part of the UK applies to the firm’s obligations and, if so, which part. This is important because the laws relating to ‘time bar’ differ between parts of the UK.¹⁶ The steps aim to reflect the legislation that determines which law applies to an advising firm’s obligations. That legislation is complex. We do not consider that it would be workable for firms to have to consider this legislation and directly apply it in individual cases.

14 The relevant limit is £150,000 for the FOS. For the FSCS, it is £50,000 for any firm declared in default on or after 1 October 2010, and 100% of the first £30,000 and 90% of the next £20,000 (up to a limit of £48,000) for any firm declared in default before that date.

15 As required by DISP 1.3.7R.

16 Under the laws of England, Wales and Northern Ireland, relevant investments made in the six years preceding the date when our rules are made final will be covered by the scheme. This reflects our analysis of how the six-year limitation period for potential claims applies. Consumers whose investments occurred more than six years before the rules come into force may be able to make legal arguments entitling them to pursue a claim against the advising firm through the courts or the FOS, based on their individual circumstances, but such cases will not fall within the scope of the scheme. Under the law of Scotland, it is our view that all relevant consumers are likely to fall within the scope of the scheme. This is because the five-year prescription (or time bar) period runs from the time at which an individual was aware, or could with reasonable diligence have been aware, that he or she had suffered loss. It is our view that for most consumers this point could not have been before 13 March 2009, when the funds were suspended, and our scheme therefore includes this as an evidential provision. However, it may be that there are particular circumstances which mean that a particular consumer had, or ought to have had, knowledge of a loss before that date (and before a date five years preceding the date when our rules are made final). Firms will need to be able to show evidence of this to exclude such consumers from the scheme.

4.7 Where the relevant law is not that of a part of the UK, then the scheme will not apply, as we are unable to specify the firm's obligations in such cases.

Q6: Do you agree with our proposed principles and scope, including our interpretation and application of the relevant laws?

Implementation

Initial communication to customers

4.8 Firms will have four weeks from the point at which our rules take effect to write to all their customers who invested in Arch cru (including those who invested on an execution only basis, or under discretionary management arrangements). This letter will either explain to the consumer that the firm intends to review the advice it gave to them, or it will explain that their case falls outside the scope of the scheme. They may fall outside of the scheme because they did not receive a personal recommendation to invest (because the sale was 'execution only', for example), because they invested outside of the relevant time period, or because they are not part of the relevant groups of investors as defined by our rules (as explained above). If the consumer wishes to dispute the firm's reasons for excluding him or her from the scheme, then the FOS will consider this.

4.9 If consumers who invested in Arch cru funds do not receive a letter from the firm within four weeks of the start of the scheme, they should call or write to the FSA to make us aware of this. We will follow this up with the firm, and will at the same time advise the consumer to contact the firm.

4.10 If firms do not have up-to-date contact details for a consumer, they must take all reasonable steps to obtain them, and resend the letter where necessary.

Completing the assessment template

4.11 We have developed an assessment template¹⁷ and instructions specifically for the scheme, which firms will be required to use. Firms will not have to complete a full assessment where they admit at the outset that the advice they gave was unsuitable. Firms may choose to complete this template themselves, or to send their files to a third party to do it on their behalf on an outsourced basis.

4.12 The template requires the reviewer to consider the information on file, or provided following a request made to the customer. The reviewer must determine whether, given the customer's circumstances at the time, a recommendation to invest in an Arch cru fund was suitable or

¹⁷ See Appendix 1.

not. In cases where the advice was unsuitable, the reviewer must determine whether this advice led the consumer to invest in an Arch cru fund and, if so, whether any redress is payable to the consumer. The template and its instructions assist in this assessment by providing a clear structure, and will help ensure that firms implement the redress scheme consistently. It will also assist our supervision of firms' compliance with the proposed scheme and the FOS in those cases which are subsequently referred by the consumer.

- 4.13 The template and instructions set out examples which tend to show compliance, or failure to comply, with the suitability requirements in our rules and the common law.
- 4.14 We have obtained the opinion of a Queen's Counsel in relation to the proposed rules, template and guidance, which confirms our interpretation of the legal requirements on firms making a personal recommendation to consumers to invest in an Arch cru fund.

Cases where the firm requires further information to make a redress determination

- 4.15 There may be cases where a firm has insufficient information to reach a conclusion on the following:
- Whether the firm failed to comply with its obligations on assessing suitability.
 - If it did fail to comply, whether the failure caused the consumer loss or damage.
 - Where required, what the redress to the consumer should be.

In such a case, the firm will need to request further information from the consumer. Firms must use template letters and questionnaires which we have developed.

- 4.16 Given our record-keeping requirements on firms, we do not expect there to be many cases of this kind.
- 4.17 When a firm does not receive a response to its initial request for information within four weeks, it is required to send a further request for information within a further week, and to take all reasonable steps to contact the consumer by other means. Where the firm still receives no response from the consumer after a further period of four weeks then it is required to write to the consumer within a further week, stating that because it does not have relevant information, it cannot determine one or more of the matters set out above and the consumer's case is no longer covered by the scheme.
- 4.18 Where it becomes apparent that the contact details held by the firm for a particular consumer are out-of-date, then the firm must take all reasonable steps to obtain up-to-date details and repeat the steps required to contact the consumer as necessary. Where a firm receives sufficient further information from a consumer, it must repeat the assessment using the template and all the information it has. Where the firm receives only some of the required information from the consumer, it must contact the consumer to attempt to obtain complete information.

- 4.19 Where a firm is unable to contact the consumer despite taking the steps set out above, then the case will no longer fall within the scheme and it does not need to take further action under the scheme, even if the consumer makes contact subsequently. The consumer does not lose their right to make a complaint to the firm about unsuitable advice (or the right to pursue legal action against the firm), and the firm's response to any complaint may be referred to the FOS in the usual way. This is subject to the usual time limits of the FOS and the general law.

Assessment of redress

- 4.20 In cases where the advice to invest in Arch cru funds was unsuitable, and this advice caused the consumer to invest, then the firm must assess the redress payable to the consumer. In making that determination, the firm will in essence be required to assess the consumer's financial position as an investor in the Arch cru funds, and the position the consumer would have been in had he or she been suitably advised.
- 4.21 To enable firms to make this assessment, we intend there to be an online calculator. This calculator will require firms to input the date(s) and amount(s) of investment, the fund(s) invested in, the number and type of shares purchased, the date(s) and amounts of any disinvestment(s), and the alternative investment that was most suitable for the consumer. It will as a result automatically deduct (where relevant) the residual value of the funds invested in, any distributions received, and the amount the consumer is entitled to receive from the CF Arch cru payment scheme. Where a consumer has disinvested (partially or fully) from the Arch cru funds, then the calculator will also take account of this, and apply interest to the amount of redress determined from the date of disinvestment to the date of assessment, at an interest rate equivalent to the prevailing Bank of England Bank Rate plus 1% over the period.
- 4.22 We could require firms to take an assignment of the consumer's rights to the assets remaining in the funds, pay the consumer redress that does not take account of the residual value of the funds, and assume the risk that the assets may not achieve the value put on them by the fund manager when they are liquidated. This would seem to us to be the most just outcome in the circumstances. However, there are some significant practical difficulties in achieving this:
- We cannot be confident that such an assignment would be achievable in all cases.
 - Many investments in the Arch cru funds are held inside vehicles such as Individual Savings Accounts (ISAs), personal pensions and offshore bonds. There may be both difficulties in effecting the assignment administratively given the various requirements that may be applied by the managers of such vehicles, and tax consequences for consumers as a result of any payments made out of the vehicle to the adviser firm.
- 4.23 We therefore propose that the consumer retains the right to receive payments as the funds are wound down, and that the firm will net off the value of the assets as stated by the fund manager at the point at which the determination is made. There is clearly some risk

that the value achieved on liquidation will not be equal to the value as assessed at the point that the redress calculation is made.

- 4.24 Under the scheme the firm is not required to determine whether or not the consumer has claimed from the CF Arch cru payment scheme: it is our view that consumers are responsible for making claims on the scheme and that adviser firms should not face financial consequences in cases where consumers choose not to make a claim. The payment scheme closes on 31 December 2012, and consumers should make a claim before that date if they want to accept a payment.
- 4.25 For the purpose of determining the value of an alternative investment which would have been suitable for the consumer, firms may select between three different benchmarks. Our intention is that these will be the same as the benchmarks we used to estimate the loss incurred by consumers, as set out in Chapter 3.
- 4.26 The firm may choose to adopt a different method of assessing redress, if it considers that it is able to determine a more relevant comparator for this purpose. For example, if on the basis of unsuitable advice from the firm the consumer had sold an existing investment which was suitable for the consumer and used these funds to invest in an Arch cru fund, the firm may determine that the more relevant comparison would be by reference to the performance of the investment the customer was advised to sell. It should be noted that, in these circumstances, the firm itself will need to obtain relevant pricing information to calculate the value of that alternative investment – our online calculator will not do this automatically.

Issuing a redress determination

- 4.27 Having completed the steps set out above, the firm will then be in a position to issue a redress determination. We have developed a template letter for this purpose, which the firm must use.¹⁸ In summary, this will state whether or not the original advice to invest in an Arch cru fund was suitable, and in situations where it was unsuitable, whether this led the consumer to invest in the Arch cru funds, and, if so, the redress calculated as being payable to the consumer. As set out above, in cases where the firm has followed our required procedures for obtaining further information with no success, the customer will not receive a redress determination. The consumer will be informed of their right of referral to the FOS if they disagree with the result.
- 4.28 Where the firm has chosen not to apply one of our comparators for calculating redress, it must state in the redress determination the reasons for deciding to adopt a different process for calculating redress.
- 4.29 The consumer is invited to respond to the redress determination where redress is assessed as payable, specifying the means by which they would like to be paid.

¹⁸ See Appendix 1.

Payment of redress

- 4.30 The proposed scheme requires firms to pay redress within 28 days of receiving the consumer's response to the redress determination, indicating the preferred means of payment. Where payment is not made, it may be enforced by the consumer as a debt, and will attract interest at the judgment rate for court awards of 8% simple interest per annum.

Review on behalf of the FSA

- 4.31 Where a firm has failed to carry out any of the actions required under the scheme, we may carry out any of the prescribed steps instead of the firm, or appoint one or more competent persons to do so on our behalf, and the firm will pay a fee for this.¹⁹ For example, we might appoint someone to carry out a review in place of the firm where we had information from the FOS that it had upheld a significant number of cases brought by consumers dissatisfied with the firm's redress determination under the scheme, or where we had received complaints from consumers who had not received letters as required by our rules. Any determination by us of whether a failure has caused loss or damage to consumers, or what the redress should be for the failure, would be subject to the procedures under Part XXVI FSMA for warning and decision notices, and to referral to the Upper Tribunal by the firm in relation to a decision notice. We have included guidance on how we propose to operate these procedures.
- 4.32 We are aware that there may be some circumstances where a firm will be prevented by an application of a condition of its professional indemnity insurance policy from issuing a redress determination to a consumer. When this occurs, the firm may refer this case to the FSA, and we will then review the case ourselves or appoint someone to carry out the review on our behalf, as per the process described above. Again, the costs of carrying out this review will be charged to the firm. Firms should check their policies for any clauses requiring notification to their insurer of any potential claims, especially if their insurer deems that failure to notify (or late notification) may invalidate their insurance cover.

Timescales

- 4.33 The scheme will run for 24 weeks from the date the rules become effective, during which time we would expect all firms to consider the cases of all relevant customers. Depending on the outcome of this consultation, we anticipate being able to issue a Policy Statement in early November 2012 and, if so, it is our intention to make the rules effective on 1 January 2013.

Reporting requirements

- 4.34 Firms will be required to report to us on their progress. The detail of the information required is set out in our rules in Appendix 1. In summary, firms must at the outset of the scheme report the total number of cases they have identified as falling within the scope of the scheme. Then, 24 weeks after the rules take effect, the firms will be required to submit

¹⁹ This fee will reflect the costs to us of employing a competent person to carry out the review or carrying out the review ourselves.

detailed information on the cases they have assessed and the outcome of those assessments. Additionally, firms with more than 100 cases to assess will be required to submit an interim report 12 weeks after the rules take effect.

- 4.35** We may also exercise our powers under section 165 (and Part XI) of FSMA to require firms to provide us with information, should we require information which is not collected by the process outlined above. Our rules also provide that firms and other parties that are subject to the scheme but not authorised by us must provide information to us as if they were subject to our powers under s.165 and other related provisions of Part XI.

Record-keeping requirements

- 4.36** As set out in our rules, we intend to require firms to retain relevant information for at least five years.

- Q7:** Do you have any comments on the implementation of the proposed scheme?
- Q8:** In particular, do you have any views on our proposed approach to calculating redress in relation to taking account of the value of the residual assets of the funds, and payments available to consumers under the CF Arch cru payment scheme?

Annex 1

Cost benefit analysis

1. The purpose of this CBA is to assess, in quantitative terms where possible and in qualitative terms where not, the economic costs and benefits of the proposed consumer redress scheme in respect of unsuitable advice to invest in Arch cru funds. This analysis is based on the information currently available to us. We will revise this CBA if we receive new information from respondents to this Consultation Paper, or other sources.

Market failure analysis

Retail investment market

2. The retail investment market suffers from information asymmetries between retail investors and the managers of investment funds. Financial advisers help retail investors overcome these by navigating through thousands of available funds to find those that match their client's needs.
3. However, financial advice can also be subject to market failures, namely, the conflicts of interest between investors (the principals) and their advisers (the agents), as advisers' and investors' incentives are not completely aligned.
4. We have rules in place, including those set out in our Conduct of Business Sourcebook (see Chapter 3) to mitigate the market failures that exist in the provision of financial advice.
5. But when firms do not meet these requirements, this conflict of interests between the investors and their advisers could lead to widespread misselling and loss to investors. However, where this does occur, we do have the powers to put things right, including by imposing a consumer redress scheme under s.404 of FSMA.

Cost benefit analysis

Proposed option: a consumer redress scheme

6. The aim of our scheme is to put consumers who received an unsuitable personal recommendation to invest in Arch cru funds back in the position they would have been in had they received suitable advice. In effect this requires firms who have mis-sold to pay redress – a transfer in economic terms – to the investors they wrongly advised. This section sets out the costs and benefits of the scheme.

Amount of redress

7. The total redress to be paid by financial advisers to investors will depend on the total number of unsuitable sales, and the average amount of redress from each unsuitable sale. These, in turn, depend on the information as set out in Chapter 3. In summary:
- There were total inflows of approximately £470m into the Arch Cru funds from 29 June 2006 until the funds were suspended on 13 March 2009, with outflows of approximately £172m. As set out in Chapter 3, we estimate that 2% of these investments were not in scope of our scheme;
 - Based on the review of a total of 179 files across a random sample of 24 Arch cru distributors stratified by level of sales, it was found that 90% of sales by value were unsuitable¹; and
 - To assess the likely redress amount, we considered what investments investors would have made had they received suitable advice. During the file review exercise, it was found that the majority of unsuitable outcomes were due to a mismatch between the risk the customer was willing and able to take, and the risks of the fund itself. Paragraph 3.32 sets out key assumptions and limitations in estimating losses. We have applied an assumption to the total loss figure, that in aggregate our proposed scheme would return 80% of the total losses to consumers as set out in Chapter 3.² This is in recognition of the difficulties of supervising every individual firm's compliance with the scheme's requirements.
8. Based on the information and evidence that is available at present, we estimate, after taking into account the interim capital distributions³, the remaining value of the funds⁴ and the Capita Payment Scheme⁵, that the aggregate redress amount will be about £110m. There is significant uncertainty around this number because our analysis is based on a sample of both the firm and consumer populations. In addition, and as explained in more detail in Chapter 3, the redress figure is also subject to market fluctuations and could change

1 As noted in Chapter 3, and discussed in Annex 4 (the statistician's report).

2 i.e. £136.7m.

3 £96.3m to date (April 2012).

4 £82.8m based on CFM's published January NAVs.

5 £54m announced in June 2011.

significantly by the time a scheme is introduced. In addition, we estimate that up to £33m (of the £110m) will be paid by the FSCS, taking into account that some firms may fail under the proposed redress scheme.

Benefits

9. The proposed consumer redress scheme aims to address the consequence of market failure and firms' non-compliance with the FSA rules. Arch cru investors who have been missold will be the main direct beneficiaries of the proposed redress scheme, as a result of a transfer from the firms which have provided them unsuitable advice (or other firms via the FSCS, in cases where firms fail). This is consistent with our consumer protection objective.
10. Requiring firms to pay redress to consumers where the firms have mis-sold could improve consumer confidence in financial services. We believe that consumer confidence is likely to be most improved where the total amount of redress paid most closely matches the total loss consumers experienced. Of the options we have considered, we estimate that a consumer redress scheme would lead to the most overall redress for Arch cru investors.
11. To the extent that this redress scheme reduces the incentives to missell and leads to an increase in suitable advice, there are benefits associated with improved advice standards and any reduction in the occurrence of misselling.

Compliance costs

12. We estimate the total administrative costs for the proposed consumer redress scheme are £5.9m to £10.6m. The following table provides the breakdown of this administrative cost between the FSA, FSCS and firms.

Cost	Estimated amount
Direct costs to the FSA	£0.5m-£1m
Firms' compliance costs	£3.4m - £7.6m
FSCS handling costs	c.£2m
Total administrative costs	£5.9m-£10.6m

13. Costs to the FSA: The estimate for the supervisory resource requirement for the scheme is between £0.5m and £1m. These costs include reporting and firm monitoring, resources to collate data and analyse them, and follow-up work. We will update these costs as necessary in the Policy Statement, based on further detailed analysis of the supervisory requirements, but we do not expect this estimate to change materially.
14. Costs to firms: Compliance costs to firms will vary depending on how the firm is going to carry out file reviews. Reviewing the files in-house is estimated to cost around £300 per file

minimum. The costs of appointing an external contractor to review the files are estimated at up to £700 per file maximum.⁶

15. In addition, firms will incur costs of £500 per FOS case fee if consumers refer their case to the Financial Ombudsman Service. This is included in the cost to firms above: we are assuming that 5% of cases will be referred to the FOS. In total, compliance costs to firms of the scheme are estimated to be in the range between £3.4m and £7.6m.
16. The FSCS will incur the costs of handling cases which relate to firms in default. Based on 30% of all cases being handled by the FSCS, we estimate that administrative costs to the FSCS will total around £2m.⁷

Market impacts

17. We expect a significant proportion of the firms affected by the s.404 consumer redress scheme to have already cancelled their permissions, and/or to default as a result of the scheme. An analysis of currently authorised known sellers indicates that around 30% of these firms may potentially breach their regulatory capital requirements as a result of the scheme: the costs associated with this have been factored into our analysis as set out above.
18. The proportion of firms that may potentially breach their capital requirements is subject to significant uncertainty. This is because:
 - The analysis is based on the capital position (as submitted in each firm's most recent regulatory returns) of the currently authorised firm population that we are aware of as having sold Arch cru funds. We also know that some firms have already cancelled their permissions, so we may have under-estimated costs that fall on the FSCS due to the compensation claims against cancelled firms.
 - In our analysis, we have not taken into account that some firms may be able to claim on their professional indemnity insurance. The FSA requires firms to have sufficient professional indemnity insurance (PII) in place. However, a firm's ability to recover money under its PII policy for its liability under an Arch cru scheme will depend on individual circumstances. So the actual proportion of currently authorised firms that may breach their regulatory capital requirements under an s.404 consumer redress scheme could be lower than 30%.
 - Firms may not fail simply because the redress amount exceeds capital – it is possible that some firms may have the ability to raise further capital over and above what they currently hold.

⁶ We have not included an estimate of the fees firms may pay where the FSA (or a competent party) carries out the review, as we are unable to estimate how many cases this may apply to.

⁷ For the purposes of this estimate, we have assumed that whether or not a firm fails is not related to the number of sales it has carried out. The assumed cost per case is £460, as set out in CP12/7 *Financial Services Compensation Scheme: changes to the Compensation sourcebook*.

19. In any case, it is likely that the FSCS will face significant costs associated with claims against firms which have already cancelled their permissions. These costs will, in turn, be passed on to the rest of the industry. In addition, where firms fail, any claims about other activities of the firm unrelated to the Arch cru funds may also fall on the FSCS, ultimately a levy on other firms. We are not able to estimate the extent of such claims.
20. For the remaining authorised firms, firms may pass on some costs incurred (both administrative costs and redress) to consumers in the form of higher prices over time. It is difficult to estimate the exact extent of the pass-through as it will depend on a variety of factors, including the degree of competition in the market.

Other options considered

21. In the table below, we summarise the costs and amount of redress likely to be paid of the other four options we considered.

Option (see Chapter 3)	Potential redress	Potential administrative costs
1. Supervisory action on firm-by-firm basis (with the top 20 distributors)	Redress: £30m	Costs to the FSA : £250k Costs to firms: £1.6m-£2.2m
2. Issuing Guidance on complaints handling	Reach: 30% Redress: £40m	Costs to the FSA: £200-400k Costs to firms: £1.7m-£3.5m
3. Reach an agreement with the top eight distributors	Redress: £18m	Costs to the FSA: £1.4m ⁸ Costs to firms: £1.4m ⁹
4. Issuing a call to action to consumers	Reach: 10% Redress: £14m	Costs to the FSA: £60-120k Costs to firms: £0.6m-£1.2m

22. Costs to the FSA include:
- resource required for supervisory and enforcement actions to ensure compliance (for all options considered); and
 - resource required for negotiating and coming to an agreement with some firms (option 3).
23. Costs to firms include:
- resource required for reviewing sales (for all options considered);
 - costs of referrals to FOS (options 2 and 4); and
 - negotiating and entering into an agreement with the FSA (option 3).

⁸ Assuming the FSA negotiates and comes to an agreement individually with the top eight distributors. This is a maximum cost for this option, based on an assumption that extensive negotiation would be involved.

⁹ This assumes that firms would use similar resources to the FSA in any negotiation.

24. Key assumptions in estimating the redress and administrative costs for the other options considered are:
- Option 1: we assume that we will take focused supervisory action on the top 20 selling firms on a firm-by-firm basis.
 - Option 2: we assume that if we issued complaints handling guidance, 30% of consumers would complain and have their cases assessed by firms, with 5% of these being referred to the FOS.
 - Option 3: we assume that we would enter negotiation and reach agreement with the top eight selling firms.
 - Option 4: we assume 10% of investors will complain following our call to action to investors, and that 5% of these complaints will be referred to the FOS.
25. All these assumptions in estimating the redress and administrative costs for the other four options considered are subject to significant uncertainty, depending, for example, on how many investors initiate complaints for Options 2 and 4, or what agreement the FSA can reach with firms for Option 3.
26. Analysing firms' current capital positions, we have identified that of 20 firms targeted by supervisory action (Option 1), 16 would be at risk with possible redress claims breaching their capital requirements. For Option 3, six of eight firms would be at risk. However, it is unlikely that firms would enter into an agreement that would put them in breach of their capital requirements, and in reality many of these firms will have either PII or access to additional capital from a related firm.
27. We note that a significant advantage of the proposed consumer redress scheme against other options considered is its wider reach and the greater total amount of redress that it is expected to deliver.

Q9: Do you have any comments, or evidence or analysis to add, on our cost benefit analysis?

Annex 2

Compatibility statement

Introduction

1. This annex explains our reasons for concluding that the proposals and draft rules in this Consultation Paper are compatible with our general duties under Section 2 of the Financial Services and Markets Act 2000 (FSMA) and with the regulatory objectives set out in sections 3 to 6. Sections 155 and 157 of FSMA require us to make this statement.

Compatibility with our statutory objectives

2. These proposals mainly contribute to our statutory objectives of consumer protection and market confidence. By acting to ensure appropriate redress for consumers we will contribute directly to consumer participation and confidence in financial markets. We do not expect these proposals to contribute materially to our other objectives.

Compatibility with the principles of good regulation

3. Section 2(3) of FSMA requires that, in carrying out our general functions, we must have regard to the principles of good regulation. Of these, our proposed rules relate to the principles of efficiency and economy, role of management, proportionality, innovation and competition.
4. With regard to efficiency and economy, our proposals will require the use of FSA resources, in particular in our supervisory areas. We consider that this resource requirement is proportionate to the outcome we expect to deliver.
5. Regarding the role of management, our proposal to ensure that a senior individual has overall responsibility for implementing our scheme is designed to ensure that the need for intervention by the FSA or the referral of cases to the FOS is kept to a minimum.

6. We have had regard to the proportionality of the proposals by carefully weighing the cost of the proposals against the benefits. The cost benefit analysis suggests that the benefits are proportionate to the costs.
7. We do not anticipate that our proposals will materially affect innovation in financial services.
8. Regarding the need to minimise the adverse effects of our policy proposals on competition, we have considered the issue, and we estimate that a number of firms (we estimate up to 30% of those affected by the scheme, based on available information) will exit the market as a result of our proposals. However, as firms that would breach their regulatory capital requirements under the proposed scheme are firms that have provided unsuitable advice to consumers, we do not consider that their exits will have a significantly negative impact on competition in this market.
9. We have considered the impact on the availability of professional indemnity insurance (PII). We do not consider that our proposals will have a significant impact on the future availability of PII in general, but we will revise this assessment in the light of any evidence received.

Why our proposals are most appropriate for the purpose of meeting our statutory objectives

10. We believe that, given the need to provide effective redress to consumers who were given unsuitable advice to invest in Arch cru funds, our proposals are the most appropriate response available to us. We explain the alternative options considered and our reasons for preferring our proposed scheme in this paper.

Annex 3

List of questions

- Q1:** Do you agree with our analysis of the risks of the Arch cru funds and the implications of this for advisers?
- Q2:** Do you have any comments on the file review?
- Q3:** Do you have any comments on our assessment of the losses experienced by consumers as a result of unsuitable advice to invest in Arch cru funds?
- Q4:** Do you agree with our assessment of the options available for delivering consumer redress?
- Q5:** Do you agree with our assessment that the legal tests for making a consumer redress scheme have been met?
- Q6:** Do you agree with our proposed principles and scope, including our interpretation and application of the relevant laws?
- Q7:** Do you have any comments on the implementation of the proposed scheme?

- Q8:** In particular, do you have any views on our proposed approach to calculating redress in relation to taking account of the value of the residual assets of the funds, and payments available to consumers under the CF Arch cru payment scheme?
- Q9:** Do you have any comments, or evidence or analysis to add, on our cost-benefit analysis?

Annex 4

Statistician's report

REPORT ON FILE REVIEW SAMPLING METHODOLOGY AND ANALYSIS OF FILE REVIEW DATA

Susan Purdon
March 2012

BACKGROUND

I was commissioned to recommend a sample design for the FSA's file review to establish with reasonable certainty the percentage of transactions¹ that involved mis-selling² and to establish with reasonable certainty whether mis-selling was widespread across firms. I was also asked to provide independent analysis of the results of the file review process and commentary from a statistical perspective.

SUMMARY

The analysis presented in this paper is based on a review of 179 files from a stratified random sample of 24 firms.

Within each of the 24 firms, a random sample of up to 12 transactions was selected (or all transactions for firms with 12 or fewer transactions). All the sampled transactions were reviewed, giving the 179 file reviews in total.

The sample of firms was taken from a list of 795 firms which the FSA had reason to believe had made in-scope transactions. During the sampling exercise it became apparent that some

1 For the purposes of this note the term "transaction" refers to a "file" within a firm.

2 A mis-sale for the purposes of this exercise is defined by the FSA as an unsuitable personal recommendation which caused a consumer to invest in one of the in-scope Arch cru Funds.

firms in this original list had not, in fact, made in-scope transactions, and that other firms not on the original list had. The statistics presented in this paper are strictly valid only for the in-scope transactions made by the firms in the original list.

On an assumption that the behaviours of the firms not on the list were similar to the behaviours of the firms on the list, then the results presented here can be used to draw inferences about the wider population of firms and transactions. But this assumption of ‘similar behaviour’ cannot be tested with the data currently available.³

Grossing the findings from the sample up to the total number of firms and transactions covered in the original list, gives an estimate of 321 firms on the list selling, and 15,300 transactions. To reiterate, the statistics in this paper are, strictly speaking, about these 321 firms and their 15,300 transactions. Any inference to the broader population of firms and transactions requires assumptions about ‘similar behaviour’.

The key findings from the analysis are:

- The file review suggests that twenty of the firms in the sample of 24 ‘substantially missold’.⁴
- Grossing the 24 firms up to the total of 321, suggests that 82% of the 321 firms ‘substantially missold’. The 95% confidence interval around that 82% is (57%, 94%). The confidence interval represents a ‘plausible range’ for the underlying rate of ‘substantial mis-selling’. That is, it is almost certainly the case that the underlying rate is at least 57%⁵, and almost certainly the case that it is less than 94%. Nevertheless, within this range, the most plausible estimate is the 82%.
- Of the 179 files reviewed, 140 (78%) were mis-sales.⁶
- Grossing up to the total of around 15,300 transactions gives a overall mis-sale rate of 77%, with a 95% confidence interval of (49%, 92%). Again, the confidence interval represents a ‘plausible range’ for the underlying rate of mis-sales.
- There is no evidence in the sample that the rate of mis-sales varied by the date of advice given.
- After grossing, the percentage of total money invested that was accounted for by the mis-sales was estimated to be 90%. The 95% CI around this percentage is (82%, 98%). There is no evidence that this percentage varied by the date of advice given.

3 To test this formally would require a repeat of the file review exercise for a sample of the ‘off list’ firms.

4 The definition of ‘substantially mis-sold’ that has been applied here is that there is statistical evidence from the sample of files reviewed that the failure rate was at least 33%, with 33% being agreed on as a reasonable yardstick. For firms with a large number of transactions for which a sample of 12 files was selected, the threshold set was 7 or more fails out of 12. With this many failures it is very unlikely (a less than 5% probability) that the underlying rate of fails is less than one third.

5 If the true rate was less than 57% then it is very unlikely (less than 3%) that the sample would have generated an estimate as high as 82%.

6 A ‘fail’ was a classification of unsuitable from the file review (which assessed files to be either suitable, unclear or unsuitable).

THE DATA

The analysis presented in this paper is based on a review of 179 files from a random sample of 24 firms. The firms were selected from a stratified list, the stratifier being the total volume of sales as recorded by the FSA. From the total list of 795 firms, the 10 largest firms were assigned to Stratum 1; the next 40 were assigned to Stratum 2; the next 245 to Stratum 3; the next 250 to Stratum 4; and the smallest 250 to Stratum 5.

In total 52 firms were selected, to generate 24 with relevant transactions. These were distributed as follows:

Stratum	Total number of firms in FSA list	Number selected	Number found to be in scope
1	10	4	4
2	40	4	4
3	245	14	5
4	250	16	6
5	250	14	5

Within the 24 firms, a random sample of 12 transactions was selected (or all transactions for firms with 12 or fewer transactions). All the sampled transactions were reviewed, giving 179 reviews in total.⁷

FIRM LEVEL ANALYSES

1. Number of firms and number of transactions

As described above, from the original list of 780 firms, 52 firms were selected to generate a final sample of 24 that were 'in scope'. The percentage of firms found to be in scope differed by strata (Stratum 1=100%; S2=100%; S3=36%; S4=38%; S5=36%). Assuming these percentages hold true for all firms in the original list, it suggests that around 321 firms from the original list were 'in scope'.

Within the sample of 24 firms, the number of transactions varied very considerably by strata: the average number of transactions for the four firms in Stratum 1 was 155; the average for stratum 2 was similar at 172; for average for stratum 3 was 65; in strata 4 and 5 the average was just 7. Extrapolating these averages up to the 321 firms gives an estimated total of 15,300 transactions 'in scope'.

2. Percentage of firms mis-selling

2.1 Percentage of firms with any evidence of mis-selling

⁷ In practice the number of files reviewed for each of the firms with more than 12 transactions varied from 9 to 12. I understand this is because some transactions requested/returned were not in scope for the review.

Of the 24 firms in the sample, in only one firm were there no mis-sales at all in the transactions reviewed, and this was a firm with just one in scope transaction. For all other firms at least one of the files reviewed was a mis-sale.

So, in the sample of 24 firms, 96% of these firms showed some evidence of mis-selling. Grossing the figures up to the estimated total of 321 firms suggests that had the study been carried out on all 321 firms, around 94% of all firms would have at least one mis-sale (in a sample of up to 12 transactions). The 95% confidence interval around this 94% is (66%, 99%).

2.2 Percentage of firms ‘substantially mis-selling’

Up to 12 files were reviewed in each of the 24 firms sampled. Based on the files reviewed it is possible to reach a view on whether that firm probably missold in more than 33% of total transactions (for the purpose of the file review exercise, based on the information held by the FSA at the time and within the time constraints for the file review, a figure of 33% mis-sales was agreed as a ‘yardstick’ to test against for ‘substantial mis-selling’).

The threshold used for firms with larger number of transactions is that at least seven of the 12 files⁸ reviewed were mis-sales – because if the underlying rate of mis-sales was 33% or less then it is highly unlikely (only around 5%) that seven or more mis-sales would be found in a sample of 12.

(NB This is conservative, because some firms with mis-sale rates of 33% or above may not meet this threshold. But there is, in fact, just one ambiguous firm in the sample (Firm E, with four mis-sales in a sample of 11 files). This firm has been designated ‘not substantially missold’ even though it is reasonably likely that this firm did mis-sell at a rate of at least 33%.)

For firms where all transactions were reviewed, the threshold for ‘substantial mis-selling’ is that a third of the files reviewed were mis-sales.

Based on these ‘rules’ the percentage of firms in the sample ‘substantially misselling’ (i.e. where we have good evidence that at least 33% of transactions were missales) = $20/24=83\%$.

Grossing the 24 firms up to the total of 321, suggests that 82%⁹ of the 321 firms have ‘substantially missold’, with a 95% confidence interval around that 82% of (57%, 94%).

2.3 Number of transactions and mis-selling

In general, there is no evidence in the sample that the percentage of firms mis-selling varied by the level of sales by a firm. Six of the seven firms in the sample with less than five

⁸ Earlier discussions in the project suggested that the threshold would be six fails out of 10. This was, however, on the assumption that a lower sample size of just 10 files would be reviewed per firm. In practice up to 12 files were reviewed per firm and the threshold has been changed in line with that.

⁹ The number is slightly different after applying grossing weights because the grossing removes the over-representation in the sample of larger firms. In effect extra weight is given to the findings from the smaller firms. The number is only slightly different because, as is described in Section 2.3, there is no relationship between mis-sales and size of firm.

transactions were ‘substantial missellers’, as were seven of the nine firms with between six and 99 transactions, and seven of the eight firms with 100 or more transactions.

TRANSACTION LEVEL ANALYSES

3. Percentage ‘mis-sales’

Overall, of the 179 files reviewed, 140 (78%) were mis-sales.

Grossing up¹⁰ to the total of around 15,300 transactions gives a overall mis-sale rate of 77%¹¹, with a 95% confidence interval of (49%, 92%).¹² In terms of the total number of mis-sales, this equates to 11,800 mis-sales, with a 95% CI of (7500, 14100).

3.1 Mis-sales by date of advice

There is no evidence in the sample that the rate of mis-sales varied by the date of advice given. Although there is variation in the grossed statistics by date, there is no trend, and the differences that are seen are not statistically significant. That is, the differences could just be ‘chance’ differences in the sample drawn.

Date advice given	Percentage mis-sales	95% CI
Prior to July 2007	90%	(64%, 98%)
Jul 07 to Dec 07	74%	(39%, 92%)
Jan 08 to Jun 08	68%	(40%, 87%)
July 08 or later	84%	(42%, 98%)

4. Value invested

The average amount invested was higher for the mis-sales than for the non-mis-sales. Grossed averages were:

- Average amount invested per transaction = £28k.
- Average amount invested for the mis-sales = £32k, with a 95% CI of (£20k, £44k).
- Average amount invested for the non-mis-sales = £12k, with a 95% CI of (£3k, £22k).

Grossing up the amounts invested for the mis-sales gives a total value of £378,947,148 for all 11,800 mis-sales, whereas the total for the non-mis-sales is £42,966,063. This implies that 90% of the total amount invested was attributable to mis-sales. The 95% CI around this percentage is (82%, 98%). This means that the percentage of total money invested

10 Taking into account the unequal selection of transactions within firms, and the unequal selection of firms within strata.

11 In this instance, the number is slightly different after applying grossing weights because the grossing removes the over-representation in the sample of the transactions of smaller firms.

12 This CI is wider than was expected. The explanation seems to be that the four firms in Stratum 2, which have many more transactions than expected (being higher than those in Stratum 1), are introducing more uncertainty into the estimates than anticipated. Between them these four firms represent almost 45% of the grossed up files, so the file level analysis is very heavily weighted towards the results from these four firms.

attributable to mis-sales could, plausibly, be as low as 82% or as high as 98%, but it is very unlikely to be outside this range.

Note that this percentage and confidence interval applies to the total amounts invested. I have no reason to assume that the same percentage would not apply to the current value of the fund, but have no data to test this assumption against.

4.1 Value invested by date of advice

This overall figure of 90% of total sales value being attributable to mis-sales does not vary significantly by the date of advice given. The percentages, plus their confidence intervals, are as follows:

Date advice given	Percentage mis-sales	95% CI
Prior to July 2007	94%	(83%, 100%)
Jul 07 to Dec 07	92%	(81%, 100%)
Jan 08 to Jun 08	83%	(70%, 96%)
July 08 or later	88%	(66%, 100%)

TECHNICAL APPENDIX

1. Sampling of firms

The initial sampling frame for the file review was a list of 795 firms that, from the FSA's records, were thought to have valid, in-scope, transactions. These were divided into five strata, based on the recorded total volume of sales within the firm, Stratum 1 being the firms with the largest volumes of sales, and Stratum 5 being the firms with the smallest volumes of sales.

Across these strata, around 26 genuinely 'in-scope' firms were to be selected. Table 1 sets out the relationship between the target sample and the final sample of 24 firms:

- Column A gives the total number of firms on the FSA list by stratum;
- Column B gives the target sample number of 'in-scope' firms;
- Column C gives the achieved sample size of firms;
- Column D sets out the number of firms that had to be selected and approached to generate the numbers in column C; and
- Column E gives the estimated 'in-scope percentage' per stratum (calculated as column C as a percentage of column D).

In total 52 firms were selected to generate the final sample of 24 firms.

Table 1: Selection of firms within strata

Stratum	A Total number of firms in FSA list	B Target number of firms	C Number in final sample	D Number selected and approached	E In-scope percentage found
1	10	4	4	4	100%
2	40	4	4	4	100%
3	245	6	5	14	36%
4	250	6	6	16	38%
5	250	6	5	14	36%
Total	795	26	24	52	46%

The number of firms in the FSA list of 795 assigned to each stratum was deliberately set very small for Stratum 1 (at just 10 firms), and fairly small for Stratum 2 (40 firms), but larger in the final three strata. In total, 8 of the total sample of 24 firms were selected from the first two strata (that is, 33% of the sample from just 6% of firms from the FSA list). This gives a very marked over-representation of large firms. The reason was that we assumed that the very largest firms, in terms of their total sales volumes, would also have made the most transactions. That is, although the first two strata represent just 6% of firms in the list, it was assumed they would cover a considerably higher percentage of all transactions. (This assumption proved broadly correct.) Over-representing these firms gave a better representation of transactions in the file-level analysis.

Column E of Table 1 has been used to estimate the number of firms in the total list of 795 that were in-scope (estimated at 321). The calculations are shown in Table 2.

Table 2: Estimation of the number of firms 'in-scope'

Stratum	A Total number of firms in FSA list	B In-scope percentage found in sampling exercise	C Number assumed 'in scope' (percentage in column B applied to column A)
1	10	100%	10
2	40	100%	40
3	245	36%	88
4	250	38%	94
5	250	36%	89
Total	795		321

The figure of 321 is only an estimate. Because the figures in Column B are based on a sample of 52 firms approached, they are themselves estimates. The 95% confidence interval around the figure of 321 is calculated to be (230, 412). That is, the true number of the 795 firms that are in-scope could, plausibly, be anywhere within the range 230 to 412.

2. Sampling of transactions

Within the 24 firms selected and identified as ‘in-scope’, a random sample of 12 transactions was selected (or all transactions for firms with 12 or fewer transactions) by the FSA. All the sampled transactions were reviewed, giving 179 reviews in total.¹³

3. Establishing whether a firm ‘substantially missold’

To gain an understanding of how widespread mis-selling was across firms a pragmatic threshold was set per firm such that, if there was good evidence that the firm had mis-sold in more than one-third of their transactions then the firm would be assigned a ‘substantially mis-sold’ flag in the data. The standard of ‘good evidence’ applied was that the number of mis-sales observed had to be incompatible with a mis-sale rate of 33%. In exact terms:

- We set a statistical ‘null hypothesis’, that the mis-sale rate in a firm was 33%;
- Under this null hypothesis, the probability of our observing as many mis-sales as we did was calculated (assuming a hypergeometric probability distribution);
- If this probability was less than 5% the null hypothesis was rejected, and the firm flagged as a ‘substantial mis-seller’.

As an illustration, firm D had 292 transactions. In a sample of 10 of those transactions, 7 were judged by the FSA to be mis-sales. If the mis-sale rate in firm D had been 33% then the probability of seven or mis-sales being found in a random sample of 10 transaction would be just 2%.¹⁴ This is lower than the 5% threshold, so we have flagged Firm D as having ‘substantially mis-sold’.

Table 3 overleaf sets out the figures for all 24 firms. Column G gives the probabilities, with any firms with a value of less than 0.05 being flagged as having substantially missold (column H).

‘Substantial mis-sale’ flags were assigned to 20 of the 24 firms in the sample.

¹³ In practice the number of files reviewed for each of the firms with more than 12 transactions varied from 9 to 12. I understand this is because some transactions requested/returned were not in scope for the review.

¹⁴ If the mis-sale rate was less than 33% then the probability of observing seven files in a sample of 10 would be even lower than 2%.

Table 3: Results of file reviews per firm

	A Firm number	B Stratum	C Total transactions	D Number of files reviewed	E Number of fails	F % fails	G Prob(observing this many fails if mis- sale rate=33%)	H 'Substantially missold' (1=yes)
Firm A	6	1	138	11	11	100	<0.001	1
Firm B	16	1	12	12	11	92	0	1
Firm C	19	1	176	10	10	100	<0.001	1
Firm D	22	1	292	10	7	70	0.02	1
Firm E	2	2	319	11	4	36	0.53	0
Firm F	3	2	155	12	12	100	<0.001	1
Firm G	12	2	181	11	10	91	0.01	1
Firm H	17	2	33	9	9	100	<0.001	1
Firm I	4	3	173	11	10	91	<0.001	1
Firm J	13	3	10	10	10	100	0	1
Firm K	14	3	7	7	7	100	0	1
Firm L	20	3	5	5	2	40	0	1
Firm M	21	3	128	11	10	91	<0.001	1
Firm N	1	4	4	4	3	75	0	1
Firm O	7	4	20	12	1	8	0.999	0
Firm P	10	4	5	5	4	80	0	1
Firm Q	11	4	3	3	3	100	0	1
Firm R	15	4	2	2	2	100	0	1
Firm S	24	4	5	5	1	20	1	0
Firm T	5	5	1	1	1	100	0	1
Firm U	8	5	2	2	2	100	0	1
Firm V	9	5	1	1	0	0	1	0
Firm W	18	5	3	3	3	100	0	1
Firm X	23	5	27	11	7	64	0.009	1

4. Grossing factors for firms and transactions

To make inferences from the sample to the wider ‘population’¹⁵ of firms and transactions the samples of 24 firms and 179 file reviews have been ‘grossed’.

The grossing factors for firms are stratum specific, as shown in Table 4.

Table 4: Grossing factors for firms

Stratum	A Total number of firms in FSA list	B Number assumed ‘in scope’ (from Table 2)	C Number of firms in sample	D Grossing factor (B/C)
1	10	10	4	2.5
2	40	40	4	10
3	245	88	5	17.5
4	250	94	6	15.6
5	250	89	5	17.9
Total	795	321	24	

Essentially, the four firms in Stratum 1 are each grossed by a factor of 2.5 so that they represent the assumed in-scope population in the stratum of 10 firms. Similarly in other strata. The firm-level grossing factors are used in any firm-level analysis.

Grossing factors have also been applied to the 179 transactions, and used in any file-level analysis. In this instance the files reviewed from a firm are grossed to the total transactions in that firm (the grossing factor being calculated as the total number of files divided by the number reviewed). These ‘within-firm’ grossing factors are then multiplied by the firm-level grossing factor.

The grossing factors applied to the transactions from each firm are given in Table 5 (column G). All transactions from a firm are given the same grossing factors: so, for example, all 11 files from Firm A are given a grossing factor of 31.4.

Applying the transaction level grossing factors gives a total, grossed, number of files of 15,294. The 95% confidence interval around this is (7,280, 23,208). This is a broad range meaning that, from the sample of 24 firms, it is very difficult to establish the total number of transactions with any certainty.

¹⁵ The ‘population’ in this context is the population of in-scope firms and transactions from the FSA’s list of 795 firms.

Table 5: Grossing factors per firm

	A Firm number	B Stratum	C Total transactions	D Number of files reviewed	E Firm level grossing factor	F Within-firm transaction grossing factor (column D/ column C)	G Overall transaction grossing factor (column E x column F)
Firm A	6	1	138	11	2.5	12.5	31.4
Firm B	16	1	12	12	2.5	1.0	2.5
Firm C	19	1	176	10	2.5	17.6	44.0
Firm D	22	1	292	10	2.5	29.2	73.0
Firm E	2	2	319	11	10	29.0	290.0
Firm F	3	2	155	12	10	12.9	129.2
Firm G	12	2	181	11	10	16.5	164.5
Firm H	17	2	33	9	10	3.7	36.7
Firm I	4	3	173	11	17.5	15.7	275.2
Firm J	13	3	10	10	17.5	1.0	17.5
Firm K	14	3	7	7	17.5	1.0	17.5
Firm L	20	3	5	5	17.5	1.0	17.5
Firm M	21	3	128	11	17.5	11.6	203.6
Firm N	1	4	4	4	15.6	1.0	15.6
Firm O	7	4	20	12	15.6	1.7	26.0
Firm P	10	4	5	5	15.6	1.0	15.6
Firm Q	11	4	3	3	15.6	1.0	15.6
Firm R	15	4	2	2	15.6	1.0	15.6
Firm S	24	4	5	5	15.6	1.0	15.6
Firm T	5	5	1	1	17.9	1.0	17.9
Firm U	8	5	2	2	17.9	1.0	17.9
Firm V	9	5	1	1	17.9	1.0	17.9
Firm W	18	5	3	3	17.9	1.0	17.9
Firm X	23	5	27	11	17.9	2.5	43.9

5. The calculation of confidence intervals

The confidence intervals presented in the main report have all been calculated in the complex samples modules of IBM SPSS Statistics Version 19.

The firm-level analysis takes into account the stratification and the firm-level grossing factors. The file-level analysis takes into account the stratification, the transaction-level grossing factors, and the fact that the files are ‘clustered’ within the 24 firms.

Appendix 1

Draft handbook text

ARCH CRU FUNDS CONSUMER REDRESS SCHEME INSTRUMENT 2012

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers);
 - (4) section 157(1) (Guidance);
 - (5) section 395(5) (The Authority’s procedures);
 - (6) section 404(3) (Consumer redress schemes);
 - (7) section 404A (Rules under s404: supplementary); and
 - (8) paragraph 17 (1) (Fees) of Schedule 1 (The Financial Services Authority).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Making the Consumer Redress Schemes sourcebook (CONRED)

- D. The Financial Services Authority makes the rules and gives the guidance in Annex A to this instrument.

Amendments to the Handbook

- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.
- F. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex C to this Instrument.

Notes

- G. In this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Arch cru Funds Consumer Redress Scheme Instrument 2012.
- I. The sourcebook in Annex A to this instrument may be cited as the Consumer Redress Schemes sourcebook (or CONRED).

By order of the Board
[] 2012

Annex A

Consumer Redress Schemes sourcebook (CONRED)

Insert the following new sourcebook in the block of the Handbook titled “Redress”, immediately after DISP. In this Annex, the entire text is new and is not underlined.

CONSUMER REDRESS SCHEMES SOURCEBOOK

1 General

[To follow]

2 Arch cru Consumer Redress Scheme

2.1 Application and subject-matter of the scheme

Application to firms which made personal recommendations

- 2.1.1 R The whole of this chapter applies to a Firm which made a Personal Recommendation in relation to an Arch cru Fund, after which a Consumer made an investment in the Arch cru Fund, and to which the Suitability Requirements applied.

Application to persons who have assumed a firm’s liabilities

- 2.1.2 R (1) The whole of this chapter also applies to a *person* who has assumed a liability (including a contingent one) in respect of a failure by a Firm to whom this chapter applies.
- (2) A *person* in (1) must either:
- (a) perform such of the obligations as the Firm is required to perform under this chapter; or
- (b) ensure that those obligations are performed by the Firm;
- and must notify the *FSA*, by [*insert date 4 weeks after entry into force*] whether that *person* or the Firm, or both, will be performing those obligations.
- (3) References in this chapter to a Firm are to be interpreted as referring to a *person* in (1) where the context so requires.

Wider application of certain provisions

- 2.1.3 R CONRED 2.2, CONRED 2.3, CONRED 2.8.1R, CONRED 2.8.2R, CONRED 2.8.3R and CONRED 2.8.5G also apply to any Firm which has carried out any of the following *regulated activities* for a *customer* in relation to an Arch cru Fund:

- (1) *advising on investments*; or
- (2) *arranging (bringing about) deals in investments*; or
- (3) *making arrangements with a view to transactions in investments*; or
- (4) *managing investments*.

Duration of the scheme

- 2.1.4 R The consumer redress scheme created by this chapter comes into force on [*insert date of entry into force*], and has no end date.

Subject-matter of the scheme

- 2.1.5 R The subject-matter of the scheme is whether a Firm satisfied the Suitability Requirements in cases where the conditions in *CONRED 2.4.2R* are satisfied (Scheme Cases).

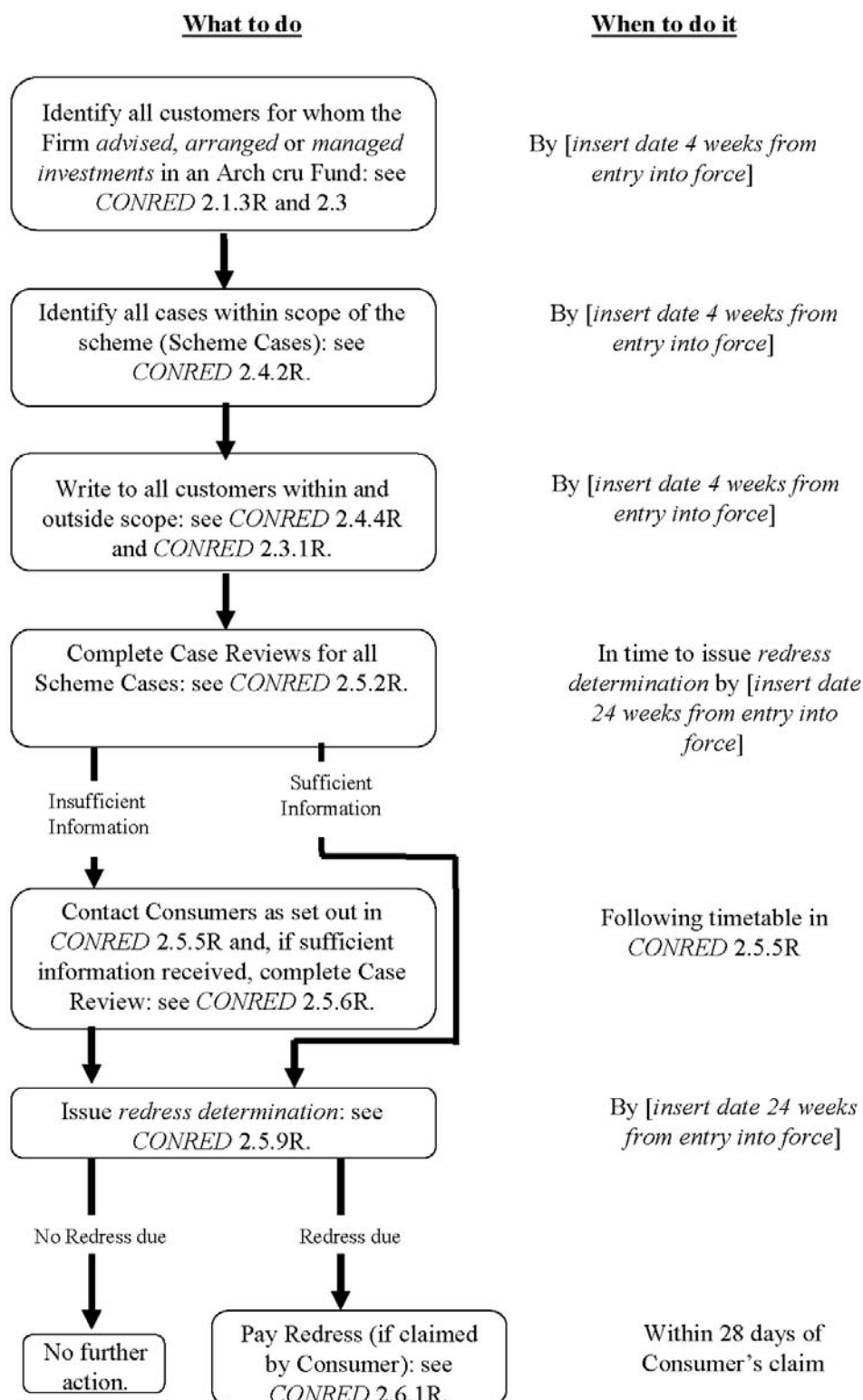
- 2.1.6 R A Scheme Case ceases to be within the subject-matter of the scheme if the Firm:
- (1) did not have sufficient information to determine the Scheme Case and has taken the required steps to obtain further information from the Consumer but still does not have sufficient information (as more fully described in *CONRED 2.5.7R*); or
 - (2) has become aware that it does not have up-to-date contact details for the Consumer and taken the required steps to obtain them but is still unable to contact the Consumer (as more fully described in *CONRED 2.8.4R*).

Defined terms

- 2.1.7 R Certain words and phrases with initial capital letters are defined in *CONRED 2 Annex 1R*. Words in italics are defined in the *Glossary*.

2.2 Summary of the scheme

2.2.1 G



2.3 Arch cru customers outside subject-matter of consumer redress scheme

- 2.3.1 R A Firm must by [*insert date four weeks from entry into force*]:
- (1) send a *redress determination* in the form set out in *CONRED 2 Annex 2R* to any *customer* in *CONRED 2.1.3R* who falls outside the subject-matter of the scheme; and
 - (2) report to the *FSA* the following information:
 - (a) the total number of investments in Arch cru Funds resulting from the *regulated activities* for a *customer* in *CONRED 2.1.3R*; and
 - (b) the number of such investments which fall outside the subject-matter of the scheme (see *CONRED 2.1.5R* and *CONRED 2.4.2R*), with a summary explanation of the reason why, in each case.

2.4 Consumer redress scheme: identifying scheme cases

Deadline to complete the steps in this section

- 2.4.1 R A Firm must, by [*insert date 4 weeks after entry into force*], take the steps set out in this section.

First step: identify cases within subject-matter of scheme

- 2.4.2 R The first step is to identify all cases within the subject-matter of the scheme; that is, where each of the following conditions is satisfied (Scheme Cases):
- (1) the Firm gave a Personal Recommendation to a Consumer to invest in an Arch cru Fund and after that recommendation the Consumer did so invest;
 - (2) the Suitability Requirements applied to the recommendation;
 - (3) the law applicable to the obligations of the Firm arising in connection with the Personal Recommendation is that of a UK Territory (see *CONRED 2.4.5R*);
 - (4) if the applicable law in (3) is that of England, Wales or Northern Ireland, the Consumer's investment in Arch cru Funds was on or after [*insert date 6 years before entry into force*];
 - (5) if the applicable law in (3) is that of Scotland:
 - (a) the Consumer's investment in the Arch cru Fund was on or after [*insert date 5 years before entry into force*]; or
 - (b) where the Consumer's investment in the Arch cru Fund was before [*insert date 5 years before entry into force*], the Consumer did not

know, and could not with reasonable diligence have known, before [insert date 5 years before entry into force], that he had suffered loss;

- (6) the Consumer has not, prior to [insert date of entry into force], accepted an offer of redress from the Firm in full and final settlement of all potential claims arising out of the recommendation in (1); and
- (7) the Consumer has not prior to [insert date of entry into force] asked the *Financial Ombudsman Service* to deal with a complaint against the Firm arising out of the recommendation in (1).

- 2.4.3 E The adoption by a Firm of any date earlier than the date of Suspension as the date when the Consumer knew, or could with reasonable diligence have known, that he had suffered loss, may be relied upon as tending to show contravention of *CONRED 2.4.2R*.

Second step: send letters to consumers

- 2.4.4 R The second step is, for all Scheme Cases, to send to the Consumer a letter in the form set out in *CONRED 2 Annex 3R*.

Applicable law

- 2.4.5 R For the purposes of *CONRED 2.4.2R(3)*, the applicable law is:
- (1) where, in connection with the Personal Recommendation:
 - (a) the Consumer has agreed to the Firm's terms of business; and
 - (b) these include a clause providing for the application of the law of a particular UK Territory;
 that UK Territory; or
 - (2) if (1) does not apply: where the Firm and the Consumer are habitually resident in the same UK Territory, and the Personal Recommendation is made there, that UK Territory; or
 - (3) if neither (1) nor (2) applies: where the conditions in *CONRED 2.4.6R* apply, the UK Territory in which the Consumer is habitually resident; or
 - (4) if none of (1), (2) or (3) applies: the UK Territory in which the Firm made the Personal Recommendation.
- 2.4.6 R The conditions referred to in *CONRED 2.4.5R(3)* are that:
- (1) in the UK Territory in which the Consumer has his habitual residence, either:
 - (a) the contract under which the Personal Recommendation was provided was preceded by a specific invitation addressed to the

Consumer, or by advertising, and the Consumer took all the steps necessary to engage the Firm; or

- (b) the Firm or its agent received the Consumer's order; and
- (2) the Personal Recommendation was provided at least in part in that UK Territory.

2.5 Consumer redress scheme: case review

Deadline to complete the steps in this section

- 2.5.1 R A Firm must, by [*insert date 24 weeks after entry into force*], take the steps set out in this section.

First step: case review of each scheme case

- 2.5.2 R The first step is to carry out a review (a Case Review) of each Scheme Case, by completing the Template, in accordance with the *rules* set out in the Instructions.
- 2.5.3 E Non-compliance with any of the *evidential provisions* set out in the Instructions (that is, *rules* with the prefix "E") may be relied upon as tending to show contravention of *CONRED 2.5.2R*.
- 2.5.4 G In complying with *CONRED 2.5.2R*, Firms should have regard to the *guidance* set out in the Instructions.

Second step: cases of insufficient information

- 2.5.5 R (1) The second step applies only in respect of a Scheme Case where a Firm has attempted to comply with the first step (*CONRED 2.5.2R*) but does not have sufficient information to determine all of the following matters:
- (a) whether it has failed to comply with any of the Suitability Requirements;
 - (b) if so, whether that failure has caused loss or damage to the Consumer; and
 - (c) if so, what the redress should be in respect of its failure.
- (2) The second step is to:
- (a) send to the Consumer a letter in the form set out in *CONRED 2 Annex 4.1R*;
 - (b) if no reply is received by the Firm within four weeks of a letter in (a) being dispatched, send to the Consumer within one further week a letter in the form set out in *CONRED 2 Annex 4.2R* and

take all reasonable steps to contact the Consumer by other means;
and

- (c) if a reply is received from a Consumer but the information it contains is inadequate to determine all the matters in (1), take all reasonable steps to obtain further information from the Consumer.

[**Note:** there is guidance on this *rule* at *CONRED 2.8.6G*.]

- 2.5.6 R A Firm which, having carried out the second step, has acquired sufficient information to determine all of the outstanding matters must then complete the first step (*CONRED 2.5.2R*).
- 2.5.7 R Where a Firm has carried out the second step in relation to a Scheme Case but still does not have sufficient information to determine all of the outstanding matters, the Scheme Case no longer falls within the subject-matter of the consumer redress scheme created by this chapter. The Firm must send the Consumer a letter in the form set out in *CONRED 2 Annex 4.3R* promptly on completion of the second step.
- 2.5.8 G Scheme Cases to which the second step (*CONRED 2.5.5R*) applies are likely to be exceptional, having regard to the record-keeping requirements applicable to *authorised persons* under *FSA rules* (notably *SYSC*).

Third step: redress determination

- 2.5.9 R The third step is to send the Consumer a *redress determination* in the form of the letter at *CONRED 2 Annex 5R* in respect of each Scheme Case.

Taking steps by or on behalf of FSA

- 2.5.10 R The *FSA* may (on giving notice to the Firm) take any of the steps in *CONRED 2.3* to *2.5*, instead of the Firm, or may appoint one or more competent persons to do so on behalf of the *FSA*, if there is a material failure by the Firm to take any of the actions required under this chapter, including where the Firm informs the *FSA* that it is unable or unwilling to take any of those actions because to do so would be in breach of a condition of its professional indemnity insurance. In such a case, the Firm must:
- (1) not carry out (or, as the case may be, continue) any of the steps to be taken by the *FSA* or competent person, unless so directed by them; and
 - (2) render all reasonable assistance to the *FSA* or competent person (but any assistance, the rendering of which would invalidate the Firm's professional indemnity insurance, is not reasonable for the purposes of this *rule*).
- 2.5.11 G The *FSA* would expect a *firm* to make reasonable efforts to obtain the consent of its professional indemnity insurer to take the relevant steps, in line with its obligations under *Principle 11* (Relations with regulators).

- 2.5.12 R If, where the *FSA* or a competent person takes any steps under *CONRED* 2.5.10R, the *FSA* proposes to make any determination of:
- (1) whether a failure by a Firm has caused loss to a Consumer; or
 - (2) what the redress should be in respect of the failure;
- the *FSA* must give the Firm a *warning notice* specifying the proposed determination.
- 2.5.13 R (1) If the *FSA* decides to make a determination of the matters in *CONRED* 2.5.12R, the *FSA* must give the Firm a *decision notice* specifying the determination.
- (2) If the *FSA* decides to make such a determination, the Firm may refer the matter to the *Tribunal*.
- 2.5.14 R Part XXVI of the *Act* (including the provisions as to final notices) applies in respect of notices given under *CONRED* 2.5.12R and *CONRED* 2.5.13R.
- 2.5.15 G Where, under *CONRED* 2.5.10R, the *FSA* (or a competent person) communicates with a *customer* (or Consumer) instead of the Firm, it will do so in its own name, making clear (in the case of a competent person) its authority from the *FSA* to do so.
- 2.5.16 G Where the *FSA* (or a competent person), instead of the Firm, carries out the third step in *CONRED* 2.5.9R, it will do so no earlier than seven *days* after the issue of a final notice in respect of the *FSA*'s decision to make a determination of the matters in *CONRED* 2.5.12R, and will send the Firm a copy of the Consumer's response to the *redress determination*.
- 2.5.17 G A fee is payable by the Firm (or *person* falling within *CONRED* 2.1.2R(1)) in any case where the *FSA* exercises its powers under *CONRED* 2.5.10R: see the table at *FEES* 3.2.7R.

2.6 Consumer redress scheme: paying redress

- 2.6.1 R A Firm must pay Redress to a Consumer:
- (1) within 28 *days* of receiving a claim from the Consumer for the Redress determined to be payable, following the issue of the *redress determination*; and
 - (2) in accordance with the instructions set out by the Consumer in his response to the *redress determination* in which he makes the claim.
- 2.6.2 R (1) Simple interest is payable on Redress from the end of the 28 *day* period referred to in *CONRED* 2.6.1R(1) until the date of payment, at a rate of 8% per annum.

- (2) After the expiry of 28 *days* following the Consumer's claim for the Redress determined to be payable, the Redress, including interest, may be recovered as a debt due to the Consumer and in particular may:
- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court; or
 - (b) be enforced in Northern Ireland as a money judgment under the Judgments Enforcement (Northern Ireland) Order 1981; or
 - (c) be enforced in Scotland by the sheriff, as if it were a judgment or order of the sheriff and whether or not the sheriff could himself have granted such judgment or order.

[**Note:** This *rule* is imposed by the *FSA* using the powers granted to it under section 404A(1)(m) of the *Act* to make *rules* providing for the enforcement of any redress under a consumer redress scheme.]

2.7 Supervision and delegation of scheme process by firms

- 2.7.1 R A Firm must ensure that the steps required by this chapter to be taken by a Firm are taken or supervised by the individual appointed by the Firm under *DISP* 1.3.7R, where that *rule* applies. In any other case, those steps must be taken or supervised by a person of appropriate experience and seniority.
- 2.7.2 G (1) Any Firm intending to outsource any of the obligations imposed on it under this chapter should have due regard to the *rules* and *guidance* on outsourcing which are applicable to it, notably in *SYSC*.
- (2) A Firm which outsources any of the obligations imposed on it under this chapter in respect of communications with Consumers should ensure that those communications are clear as to the identity of the Firm.

2.8 Provisions relating to communications with consumers

- 2.8.1 R Whenever a Firm is required by a provision of this chapter to send a letter in a form set out in an Annex, it must do so following the instructions in the standard form set out in the relevant Annex, complying with any instructions in that Annex to insert, delete, select or complete text.
- 2.8.2 R All letters to Consumers required under this chapter must be printed on the letterhead of the Firm and dispatched by recorded delivery mail.
- 2.8.3 R (1) Where a Firm becomes aware that the contact details it holds for a *customer* (or Consumer) are out of date, it must take all reasonable steps to obtain up-to-date contact details and, where appropriate, using such

up-to-date details, re-send any letter, and repeat the steps to contact the *customer* (or Consumer), required by this chapter.

- (2) If, having complied with (1), a Firm is unable to contact a *customer* (or Consumer), it need not take any further action pursuant to this chapter in relation to that *customer* (or Consumer).
- 2.8.4 R Where a Firm has complied with *CONRED 2.8.3R(1)* in relation to a Scheme Case but is unable to contact a Consumer, the Scheme Case no longer falls within the subject-matter of the consumer redress scheme created by this chapter.
- 2.8.5 G The reasonable steps in *CONRED 2.8.3R(1)* might include checking public sources of information, but without incurring excessive cost.
- 2.8.6 G The reasonable steps in *CONRED 2.5.5R(2)(b)* might include attempting to contact the Consumer by telephone (at a reasonable hour when the Consumer is likely to be available to receive the call) or by email.
- 2.8.7 R A Firm must not make any communication to a Consumer which seeks to influence for the benefit of the Firm the outcome of the processes undertaken pursuant to this chapter, either by seeking to influence the content of information provided by the Consumer in response to the Firm's requests made under *CONRED 2.5.5R* or otherwise.

2.9 Consumer redress scheme: reporting and information requirements

Reports to be made

- 2.9.1 R A Firm must make the following reports to the *FSA*, by email to the following address: [to follow]
- (1) promptly on completion of the first step in *CONRED 2.4.2R*, the total number of Scheme Cases the Firm has identified;
 - (2) for a Firm which has identified more than 100 Scheme Cases, by [*insert date 12 weeks after entry into force*], a consolidated report of Scheme Cases in the form set out in *CONRED 2 Annex 10.1R*;
 - (3) by [*insert date 24 weeks after entry into force*], a consolidated report of Scheme Cases in the form set out in *CONRED 2 Annex 10.1R*; and
 - (4) by [*insert date 24 weeks after entry into force*], a report of individual Scheme Cases in the form set out in *CONRED 2 Annex 10.2R*.

Requests for information by the *FSA*

- 2.9.2 R In relation to any matter concerning or related to the consumer redress scheme created by this chapter, section 165 of the *Act* and any provision of Part XI of the *Act* which relates to that section, apply to any Firm (or *person* in *CONRED*

2.1.2R) which is not an *authorised person* as if it were an *authorised person*.

2.10 Record-keeping requirements

- 2.10.1 R (1) A Firm must keep the following records:
- (a) the certificate of posting for each letter sent in accordance with this chapter;
 - (b) a copy of each letter sent in accordance with this chapter;
 - (c) a record of any attempts to contact the Consumer, or obtain further information, in accordance with *CONRED* 2.5.5R(2)(b) or (c);
 - (d) the completed Template for each Scheme Case; and
 - (e) all Available Evidence.
- (2) A Firm must keep the records required by (1) for a minimum of 5 years from the date of their creation.

2 Annex 1R

Definitions

In this Chapter, certain words and phrases have the meanings given to them as follows:

“Arch”	Arch Financial Products LLP.
“Arch cru Fund”	any of the following Arch cru funds: <ul style="list-style-type: none"> (a) Investment Portfolio; (b) Specialist Portfolio; (c) Income Fund; (d) Balanced Fund; (e) Global Growth Fund; (f) Finance Fund.
“Available Evidence”	information on the Consumer file and any information received from a Consumer.
“CF Arch cru Payment Scheme”	the requirements included in the <i>permissions</i> of Capita Financial Managers Limited, BNY Mellon Trust & Depository (UK) Limited and HSBC Bank plc at their request under section 44 of the <i>Act</i> on 31 August 2011.
“Case Review”	a review as required by <i>CONRED 2.5.2R</i> .
“Consumer”	<ul style="list-style-type: none"> (a) where the Personal Recommendation was made on or before 31 October 2007, a <i>private customer</i> for the purposes of <i>COB 2</i> and <i>COB 5</i> as defined by the version of the <i>Handbook</i> then in force; or (b) where the Personal Recommendation was made on or after 1 November 2007, a <i>retail client</i> in accordance with <i>COBS 3.4.1R</i>.
“Consumer Communication”	correspondence between the Firm and the Consumer, which may include references to promotional materials, such as monthly reports, fund factsheets or offer documents or prospectuses.
“Consumer’s Investment”	the investment in Arch cru Funds which a Consumer made in a Redress Case.
“Cru”	Cru Investment Management Limited.
“Data Sections”	the following sections of the Template: File Details; Fund Sale Details; Consumer Details; Consumer’s Investment Objectives;

	Attitude to Risk; Consumer's Financial Situation.
“Example”	a Consumer outcome which tends to show compliance or non-compliance with the Suitability Requirements.
“Firm”	(a) an <i>authorised person</i> ; or (b) a person who was an <i>authorised person</i> when the relevant activity took place but has since ceased to be one.
“Instructions”	CONRED 2 Annex 7.
“Investment Benchmark”	an investment benchmark in CONRED 2 Annex 8.
“Personal Recommendation”	a recommendation which is <i>advice on investments</i> and: (a) where given on or before 31 October 2007, was given to a <i>specific person</i> ; or (b) where given on or after 1 November 2007, was presented as suitable for the person to whom the recommendation was made, or was based on a consideration of the circumstances of that person, other than a recommendation issued exclusively through distribution channels or to the public.
“Redress”	the amount of redress payable, determined by a Firm carrying out a Case Review in compliance with CONRED 2.5.2R.
“Redress Case”	a Scheme Case where the Firm's failure to comply with any of the Suitability Requirements caused the Consumer to invest in an Arch cru Fund.
“Scheme Case”	a case falling within CONRED 2.4.2R.
“Suitability Requirements”	the requirements described at paragraph 5.1R of the Instructions.
“Suitable Investment”	an investment in which the Consumer would have invested if the Firm had complied with the Suitability Requirements and other requirements applicable to it at the time in the Redress Case.
“Suspension”	the suspension on 13 March 2009 of dealings in Arch cru Funds.
“Template”	CONRED 2 Annex 6R.
“UK Territory”	England, Wales, Northern Ireland or Scotland.

2 Annex 2R Redress determination for customers outside subject-matter of Arch cru consumer redress scheme

[Firm details]

[Date]

[Customer details]

Fund name(s): *[insert fund name(s)]*

Amount(s) invested: *[insert amount(s) invested]*

Date(s) of advice given: *[insert date(s) of advice given]*

This letter is important and requires your careful consideration

Dear *[Insert name]*

Redress determination in relation to investment in the Arch cru *[insert fund name]*

- **The Financial Services Authority (FSA) has identified problems with advice to invest in a number of Arch cru funds.**
- **It has put in place a scheme which requires all firms which advised customers to invest in these funds to review this advice, unless there are specific circumstances to exclude the customer from the scheme.**
- **We consider that there are specific circumstances to exclude you from the scheme. These are explained below. We will therefore not be taking any action in relation to your investment in the above-named fund.**

The FSA has recently conducted an assessment of the suitability of advice given to customers to invest in a number of Arch cru funds. As set out in *[insert name of policy statement]* all firms who advised customers to invest in these funds are required to review the suitability of this advice and provide redress to customers where appropriate, unless there are specific circumstances to exclude the customer from the scheme.

We consider that there are specific circumstances to exclude you from the consumer redress scheme set out by the FSA for the following reason(s).

[We did not provide you with advice to invest in the above-named fund and so consider that your case does not fall within the scope of this scheme.] OR

[You were not a private customer or a retail client at the time of our advice to you and so do not fall within the scope of this scheme.] OR

*[You have previously made a complaint about the advice we provided to you to invest in the *[insert fund name]*. We responded to this complaint in our letter of *[insert date of final response]* setting out our conclusions and you accepted this response in full and final settlement.] OR*

*[You have previously made a complaint about the advice we provided to you to invest in the *[insert fund name]*. We responded to this complaint in our letter of *[insert date of final**

response] setting out our conclusions. You subsequently referred this complaint to the Financial Ombudsman Service.] OR

[For England, Wales and Northern Ireland cases:] [The consumer redress scheme set out by the FSA does not include advice on an investment in an Arch cru fund which was made before [insert date six years before entry into force] (where the case is under the law of England and Wales or Northern Ireland). Your investment in the above-named fund was made on [insert date of investment] and as such we consider that this case does not fall within the scope of the consumer redress scheme.] OR

[For Scotland Cases:] [The consumer redress scheme set out by the FSA does not include advice on an investment in an Arch cru fund which was made more than five years before the date when the consumer should have reasonably become aware of a loss (where the case is under the law of Scotland). Your investment in the above-named fund was made on [insert date of investment] and as such we consider that this case does not fall within the scope of the consumer redress scheme, because in our view you should have been aware of a loss on [insert date].]

We will therefore not be taking any action under the scheme in relation to your investment in the above-named fund. If you are dissatisfied because you think we should include you in the scheme, you may refer this determination to the Financial Ombudsman Service (FOS), within six months of the date of this letter. The FOS will determine whether or not we have applied the rules of the scheme correctly in deciding to exclude you. A leaflet explaining the role of the FOS is enclosed.

The Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

0800 023 4567

0300 123 9 123

complaint.info@financial-ombudsman.org.uk

Yours sincerely

2 Annex 3R Letter to consumers confirming existence of review

[Firm details]

[Date]

[Consumer details]

Fund name(s): *[insert fund name(s)]*

Amount(s) invested: *[insert amount(s) invested]*

Date(s) of advice given: *[insert date(s) of advice given]*

This letter is important and requires your careful consideration

Dear *[Insert name]*

Advice to invest in the Arch cru *[insert fund name]*

- **The Financial Services Authority (FSA) has identified problems with advice to invest in a number of Arch cru funds.**
- **It has put in place a scheme which requires all firms which advised consumers to invest in these funds to review this advice, unless there are specific circumstances to exclude the consumer from the scheme.**
- **We will therefore be reviewing documentation relating to our advice to you to invest in the above-named fund. Depending on the outcome of this review, you may be entitled to redress.**
- **We will undertake this review and let you know the outcome by *[insert date]*. Note that you do not need to respond to this letter.**

The FSA has recently conducted an assessment of the suitability of advice given to consumers to invest in a number of Arch cru funds. As set out in *[insert name of policy statement]* all firms who advised consumers to invest in these funds are required to review the suitability of this advice and provide redress to consumers where appropriate, unless there are specific circumstances to exclude the consumer from the scheme.

We will therefore be reviewing the advice we provided to you to invest in the above-named fund(s). *[We have contracted *[Name of firm]* to undertake this review on our behalf.]* The review will be conducted in line with the methodology set out by the FSA in order to determine the suitability of this advice. Depending on the outcome of this review you may be entitled to redress.

We will let you know the outcome of this by *[insert date]*. If you would like to discuss any of the matters raised in this letter please contact us on *[insert contact details.]*

Yours sincerely

2 Annex 4R Letters to consumers regarding information

4.1R Initial letter requesting information/enclosing questionnaire

[Firm details]

[Date]

[Consumer details]

Fund name(s): *[insert fund name(s)]*

Amount(s) invested: *[insert amount(s) invested]*

Date(s) of advice given: *[insert date(s) of advice given]*

This letter is important and requires your careful consideration

Dear *[Insert name]*

Advice to invest in the Arch cru *[insert fund name]*

- **The Financial Services Authority (FSA) has identified problems with advice to invest in a number of Arch cru funds.**
- **It has put in place a scheme which requires all firms which advised consumers to invest in these funds to review this advice, unless there are specific circumstances to exclude the consumer from the scheme.**
- **We wrote to you on *[insert date]* to inform you that we would be reviewing documentation relating to our advice to you to invest in the above-named fund.**
- **To complete this review we require additional information from you which is set out below. We ask that you provide us with this information within four weeks.**

The FSA has recently conducted an assessment of the suitability of advice given to consumers to invest in a number of Arch cru funds. As set out in *[insert name of policy statement]* all firms who advised consumers to invest in these funds are required to review the suitability of this advice and provide redress to consumers where appropriate, unless there are specific circumstances to exclude the consumer from the scheme.

As set out in our letter of *[insert date]* we are reviewing the advice we provided to you to invest in the above-named fund(s). *[We have contracted *[Name of firm]* to undertake this review on our behalf.]* The review will be conducted in line with the methodology set out by the FSA in order to determine the suitability of this advice. Depending on the outcome of this review you may be entitled to redress.

To complete this review we require you to provide us with additional information. *[Please provide us with *[insert information requested]* OR Please complete the enclosed questionnaire.]* You do not have to provide us with this information, but if you wish us to progress your case we ask that you provide us with this information within four weeks. Please contact us *[insert details]* should you have any difficulties with providing this information, or to discuss any of the matters raised in this letter. If we do not hear from you we will be unable to complete our review of your case.

Yours sincerely

Questionnaire

Please complete the questions below as accurately as possible. **These questions should be completed using information which reflects your situation as at [complete date], when you invested in the Arch cru [complete fund] based on the advice of [insert adviser name].**

Personal details

Name

DOB

Employment status at time of sale (employed/self-employed/retired/not working/other)

Annual income at time of sale £

[Second investor

Name

DOB

Employment status at time of sale (employed/self-employed/retired/not working/other)

Annual income at time of sale]

Amount(s) invested £ _____

Arch cru fund(s) invested in [investment/specialised/income/balanced/global growth/finance]

Your investment objectives at the time

Were you saving for some specific purpose? Y/N

If yes, what was this? _____

Were you investing for growth (i.e. to accumulate capital to use later) Y/N

Were you investing for income (i.e. to receive regular payments) Y/N

If you were investing for income, what level of income did you require from the investment, per month or year? £ _____ per _____

Was your aim to diversify or change the risk profile of your existing portfolio? Y/N

Did you have some other objective for this investment? Y/N

If yes, what was this? _____

Were you prepared to accept the risk of some loss of your original investment (i.e. a risk to your capital)? Y/N

Your financial situation at the time

To the extent possible, please complete the boxes below.

Amounts held in:

Cash £
Existing investments in Arch cru funds £
Other investments £

What was the source of the money invested in Arch cru funds on this occasion?

Switch from _____ above.

Your understanding of the investment at the time

What did you understand the risk of capital losses to be at the time you invested?

Please indicate on this line:

Low_____High

What kind of assets did you understand that the Arch cru funds would invest in?

Tick all that apply:

- Cash
- Bonds
- Listed UK equities
- Listed overseas equities
- Listed higher risk equities (e.g. emerging markets)
- Property
- Private (i.e. unlisted) equity
- Private (i.e. unlisted) debt
- Other assets

4.2R Follow-up letter

[Firm details]

[Date]

[Consumer details]

Fund name(s): [insert fund name(s)]

Amount(s) invested: [insert amount(s) invested]

Date(s) of advice given: [insert date(s) of advice given]

This letter is important and requires your careful consideration

Dear [Insert name]

Advice to invest in the Arch cru [insert fund names]

- **The Financial Services Authority (FSA) has identified problems with advice to invest in a number of Arch cru funds.**
- **It has put in place a scheme which requires all firms which advised consumers to invest in these funds to review this advice, unless there are specific circumstances to exclude the consumer from the scheme.**
- **We are reviewing documentation relating to our advice to you to invest in the above-named fund(s). Depending on the outcome of this review, you may be entitled to redress.**
- **We wrote to you on [insert date of initial letter] to inform you that to complete this review we require additional information from you. This information is set out below. We ask that you provide us with this information within four weeks.**
- **If you have difficulties in providing us with this information please contact us. If we do not hear from you we will be unable to progress our review of your case.**

The FSA has recently conducted an assessment of the suitability of advice given to consumers to invest in a number of Arch cru funds. As set out in [insert name of policy statement] all firms who advised consumers to invest in these funds are required to review the suitability of this advice and provide redress to consumers where appropriate, unless there are specific circumstances to exclude the consumer from the scheme.

We are reviewing the advice we provided to you to invest in the above-named fund. [We have contracted [Name of firm] to undertake this review on our behalf.] The review will be conducted in line with the methodology set out by the FSA in order to determine the suitability of this advice. Depending on the outcome of this review you may be entitled to redress.

To complete this review we require you to provide us with additional information. [Please provide us with [insert information requested]] OR [Please complete the enclosed questionnaire.] You do not have to provide us with this information, but if you wish us to progress your case we ask that you provide us with this information within four weeks. Please contact us [insert details] should you have any difficulties with providing this information, or to discuss any of the matters raised in this letter. If we do not hear from you we will be unable to complete our review of your case.

Yours sincerely

4.3R Final letter

[Firm details]
[Date]

[Consumer details]

Fund name(s): *[insert fund name(s)]*

Amount(s) invested: *[insert amount(s) invested]*

Date(s) of advice given: *[insert date(s) of advice given]*

This letter is important and requires your careful consideration

Dear *[Insert name]*

Advice to invest in the Arch cru *[insert fund name(s)]*

- **The Financial Services Authority (FSA) has identified problems with advice to invest in a number of Arch cru funds.**
- **It has put in place a scheme which requires all firms which advised consumers to invest in these funds to review this advice, unless there are specific circumstances to exclude the consumer from the scheme.**
- **We wrote to you on *[insert dates of initial letter and subsequent letter]* to inform you that to complete this review we require additional information from you. We have also attempted to contact you *[insert details]*.**
- **You have not provided the required information, and we are therefore not able to progress your case under the scheme.**

You should note that this letter does not affect your right to make a complaint to us about the issue above or any other issue, nor does it restrict your ability to take legal action.

Yours sincerely

Annex 5R Redress determination letter for Scheme Cases*[Consumer details]**[Firm details]**[Date]*Dear *[Insert name]***Redress determination in respect of advice to invest in the Arch cru *[insert fund name(s)]****[WHERE INFORMATION HAS BEEN SUFFICIENT TO REACH A CONCLUSION:]*

As required by the Financial Services Authority, documentation relating to your investment in the fund named above has been reviewed by *[insert name of reviewing party]*. A copy of the completed template used to complete this assessment is enclosed. The outcome of this review is that the original advice to invest has been found to be *[suitable/unsuitable]*, for the following reason:

[Insert reason: summarise the information in the template which led to the finding]

[If advice unsuitable, but firm believes consumer did not invest on the basis of the advice:] Although the advice provided to you to invest in the Arch cru funds was not suitable given your circumstances at the time, it is clear from the evidence available that you did not invest on the basis of this advice. *[Insert further detail of the evidence.]*

[If sale unsuitable, but no redress is payable according to calculator:] Although it has been determined that the advice you received was unsuitable, use of the calculator provided by the FSA has shown that you suffered no financial loss as a result. This calculation is enclosed.

[If sale unsuitable, Firm is applying FSA comparator in calculation, and redress is payable as a result:] Applying this result to the calculator provided by the FSA results in an amount owed to you of £_____. This calculation is enclosed. In determining redress, *[I/we]* decided that a relevant comparator for you was comparator *[insert number]* as provided by the FSA. This comparator is defined as follows: *[Insert description of relevant comparator as provided in FSA template instructions]*. In *[my/our]* view this comparator is closest to the description '*[insert description]*' on *[my/our]* firm's risk scale, which means that at the time when *[I/we/our firm]* gave you advice to invest in the *[fund name]* you *[insert explanation of the relevant point on the risk scale, setting out why the customer was rated in this way]*.

[If sale unsuitable and Firm is not applying FSA comparator in calculation:] Applying this result to the calculator provided by the FSA results in an amount of £_____. This calculation is enclosed. You should note that in carrying out this calculation, the comparators designed for the purpose by the FSA have not been used. This is because in your case a more reasonable comparator was *[insert comparator]* because *[insert reason]*.

2 Annex 6R

ARCH CRU PRODUCT ADVICE SUITABILITY ASSESSMENT TEMPLATE

Unique Reference

(FRN, Consumer name, date of birth, date of advice)	<i>Automatically populated</i>
---	--------------------------------

Admission of failure in Scheme Case

Only complete this section for those cases where you admit the Firm has failed to comply with a Suitability Requirement

The Firm admits that it has failed to comply with a Suitability Requirement in the Scheme Case	<i>Yes*</i>
--	-------------

** A Firm admitting a failure is only required to fill out the File Details, Fund Sale Details, Causation and Redress sections of the Template.*

File Details

Assessor name	<i>Free text</i>
Assessment date	<i>Date box</i>
FRN	<i>Free text</i>
Firm name	<i>Free text</i>
Appointed Representative (if applicable)	<i>Free text</i>
Adviser name (optional)	<i>Free text</i>

Fund Sale Details

Fund, amount invested, share class (Fund 1)	<i>Drop down menu</i>	<i>Amount invested in each fund</i>	<i>Investment Class (e.g. Income A)</i>	<i>Wrapper / direct investment</i>
Fund, amount invested, share class (Fund 2 etc)	<i>Drop down menu</i>	<i>Amount invested in each fund</i>	<i>Investment Class (e.g. Income A)</i>	<i>Wrapper / direct investment</i>
Date of advice to Consumer	<i>Date box</i>			
Date of investment	<i>Date box</i>			
Date of disinvestment	<i>Date box</i>	<i>Partial / Total Surrender</i>		

Consumer details

Was this advice given on a joint basis?	<i>[yes / no] *</i>
---	---------------------

	Consumer 1	* Consumer 2 (for joint policies)
Full name	<i>Free text</i>	<i>Free text</i>
Date of birth	<i>Free text</i>	<i>Free text</i>
Age at time of advice	<i>Auto calculate</i>	<i>Auto calculate</i>
Employment status	<i>Drop down</i>	<i>Drop down</i>
Annual income	<i>£</i>	<i>£</i>
Annual expenditure	<i>£</i>	<i>£</i>

Consumer's investment objectives

What Consumer objectives were stated in the Consumer file	Priority/ Yes/ No	
General lump sum investment for growth	Priority . Yes . No	
General lump sum investment for income	Priority*. Yes* . No	<i>* £ amount of income</i>
Tax efficiency	Priority . Yes . No	
Retirement planning	Priority . Yes . No	
Realignment of portfolio	Priority . Yes . No	
Other objective	Priority* . Yes* . No	<i>* insert details – free text boxes depending on the number of extra objectives</i>

Comments on Consumer investment objectives:

<i>Free text</i>

Attitude to risk

Consumer's attitude to risk (ATR)

Free text

Firm's description of the Consumer's ATR

Free text

Comments on the firm's assessment of the Consumer's ATR

Free text

Consumer's financial situation

Assess the Consumer's portfolio so that you are able to determine the following: -

Consumer's investments (excluding main residence)		Total before investment (£)	Total after investment in Arch Cru product
Cash (including cash ISAs)		£	£
Investments		£	£
Arch Cru Fund 1	Drop down of 6 funds	£	£
Arch Cru Fund 2 etc	Drop down of 6 funds	£	£
Other		£	£
TOTAL		£ [SUM]	£ [SUM]

Comments on portfolio before and after sale

Free text

Comments on the Consumer's capacity for loss

Free text

Suitability Requirements

Does the Available Evidence show overall that:		Yes / No
(1)	The Consumer was willing to take a high degree of risk with the sum invested	

(2)	The risk profile of the Consumer's overall savings and investment portfolio after the sale was suitable for the level of risk he was willing to take to meet his investment objectives	
(3)	The Consumer's portfolio was sufficiently diversified after the sale to meet his investment objectives	
(4)	The Consumer was reliant on income from this investment	
(5)	The Consumer had the capacity to bear the risk of investing [x%] of his savings and investments in the selected Arch Cru Fund	
(6)	The firm took reasonable steps to ensure the Consumer had the experience and knowledge to invest in the selected Arch cru Fund	
(7)	The recommendation is <u>not</u> suitable for the Consumer's investment objectives or financial situation for some other reason (if 'yes' please explain below)	

Outcome

Describe the evidence and explain your overall conclusion on suitability:

<i>Suitable /Unsuitable</i>

<i>Free text</i>

Causation

Where a firm has failed to comply with the Suitability Requirements:

Based on the Available Evidence, is it more likely than not that the Consumer relied on the firm's Personal Recommendation to invest in an Arch cru Fund?	<i>Yes / No</i>
---	-----------------

Please explain why the Consumer invested in an Arch cru Fund with reference to the evidence on file	<i>Free Text</i>
---	------------------

Redress

* indicates a field which may not be applicable in all cases. All other fields are mandatory.

indicates that extra boxes will be provided to allow you to insert a number of dates or funds. Each investment will be given a number so you can distinguish between them.

	<u>Part 1</u>	Fund 1	Fund 2 etc	
#	Fund(s) and share class	<i>Autofill from Data Section of the Template</i>	<i>Autofill from Data Section of the Template</i>	
#	Date of investment	<i>Autofill from Data Section of the Template</i>	<i>Autofill from Data Section of the Template</i>	
*	Date of disinvestment(s)	<i>Auto fill from Data Section of the Template</i>	<i>Auto fill from Data Section of the Template</i>	
#	Number of shares at date of investment	<i>Number</i>	<i>Number</i>	
*	Number of shares at [insert date of calculation] (following disposal(s))	<i>Number</i>	<i>Number</i>	
#	Suitable Investment	<i>1, 2, 3 or "other"</i>	<i>1, 2 or 3 or "other"</i>	<i>If "other" – insert details</i>

Comments on Suitable Investment

--

Part 2

	Fund 1	Fund 2 etc
For Arch cru Funds where Consumer retains part of the investment:		

A	Value of a Suitable Investment at [insert date of calculation]	<i>£auto calculate or firm to insert</i>	<i>£auto calculate or firm to insert</i>	
B	Value of Arch cru Fund at [insert date of calculation]	<i>£auto calculate</i>	<i>£auto calculate</i>	
C	Distributions	<i>£auto calculate</i>	<i>£auto calculate</i>	
D	CF Arch cru Payment Scheme	<i>£auto calculate</i>	<i>£auto calculate</i>	
R	Redress	<i>£ A-B-C-D</i>	<i>£ A-B-C-D</i>	<i>SUM Fund 1 + 2 etc</i>

For Arch cru Funds where Consumer has disposed of part of the investment:		Fund 1	Fund 2 etc	
E	Value of a Suitable Investment at date of disposal	<i>£auto calculate or firm to insert</i>	<i>£auto calculate or firm to insert</i>	
F	Distributions	<i>£auto calculate</i>	<i>£auto calculate</i>	
G	Capital realised on disposal	<i>£</i>	<i>£</i>	
R	Redress (including interest (“I”))	<i>£ E - F - G + I</i>	<i>£ E - F - G + I</i>	<i>SUM Fund 1 + 2 etc</i>

Redress Amount

		Fund 1	Fund 2 etc	
	No disinvestment	<i>£</i>	<i>£</i>	<i>SUM Fund 1 + 2 etc</i>
	Disinvestment	<i>£</i>	<i>£</i>	<i>SUM Fund 1 + 2 etc</i>

	TOTAL REDRESS PAYABLE	£	£	<i>SUM TOTAL</i>
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2 Annex 7

CF ARCH CRU FUNDS TEMPLATE INSTRUCTIONS

1 Limitations on use of Template and Instructions

- 1.1 G The Template and Instructions are only to be used for the purpose of complying with the requirements under *CONRED 2* to assess sales of Arch cru Funds. They should not be used for any other purpose.

2 Using the Template

- 2.1 G The Template contains factors to take into account to determine whether there has been a failure to comply with the Suitability Requirements in a Scheme Case.
- 2.2 R The Template is divided into several sections which must be completed in full except where indicated in the Instructions.
- 2.3 R Before completing this Template you must familiarise yourself with the features and risks of the Arch cru Funds that a reasonably competent Firm should have identified.
- 2.4 R Answer the questions in the Template and complete your assessment by reference to the Available Evidence, and the features and risks of the Arch cru Funds that a reasonably competent Firm should have identified as specified in *CONRED 2* Annex 9R.

3 Admission of failure to comply with suitability requirements

- 3.1 R Where you admit that the Firm has failed to comply with a Suitability Requirement in a Scheme Case complete the following sections of the Template:
- (1) Admission of failure in a Scheme Case;
 - (2) the following sub-sections of the Data Section of the Template:
 - (a) File details;
 - (b) Fund sale details;
 - (c) Consumer details;
 - (3) Causation; and
 - (4) Redress.

4 Data Section of the Template

- 4.1 R Fill in the following sub-sections of the Data Sections of the Template as follows:

- (1) **File details:** enter the Firm-specific information as it appears on the *FSA Register*.
- (2) **Fund sale details:** take the following steps:
 - (a) Select the Arch cru Fund(s) sold, enter the amount invested, investment class and the wrapper (if applicable).
 - (b) Enter the date of advice to the Consumer and the date of investment. If you cannot identify the date of investment from the Consumer file, insert the date of advice as the approximate date of the investment.
 - (c) Identify the date of disinvestment (if applicable) and record whether there was a partial or total surrender of the investment. This includes situations where the disinvestment occurred under the Capita Hardship Scheme (that is, the hardship scheme for investors in Arch cru funds, as set out by Capita Financial Managers Ltd in a letter to investors of 7 December 2009).
- (3) **Consumer details:** enter the Consumer details. Advice was given on a joint basis if it was given to two people where the Personal Recommendation relates to a “joint” portfolio. This includes cases where the advice is directed at a couple, but where the investment is in one spouse’s name for tax purposes.
- (4) **Consumer investment objectives:** take the following steps:
 - (a) Identify and select whether any of the objectives listed on the Template is recorded (yes/no) and override the “yes” with “priority” if the Consumer says, or the Firm recorded that, this objective was a priority.
 - (b) If a Consumer was investing a lump sum to obtain an income identify and record what level of annual income the Consumer wanted from this Fund.
 - (c) The objective ‘Realignment of portfolio’ must be used when the Consumer’s circumstances or overall investment objective has changed.
 - (d) If the Consumer had other investment objectives not identified in the list above, record these objectives in the box provided and identify whether they were a priority.
 - (e) Complete the “Comments on Consumer investment objectives” box where you have further comments on the Consumer’s investment objectives relevant to your assessment.
- (5) **Attitude to risk (“ATR”):** take the following steps:

- (a) In the “Consumer’s attitude to risk” box record the Firm’s short description of the Consumer’s ATR using the headline description used on their risk scale (e.g. “balanced”, “medium”, “5/10”).
 - (b) In the “Firm’s description of the Consumer’s ATR” box record the Firm’s description of the Consumer’s ATR, using the Firm’s own wording. Include any description of what sort of assets a Consumer with this ATR would be investing in.
 - (c) In the “Comments on the Firm’s assessment of the Consumer’s ATR” box record any comments you have on the Firm’s assessment of the Consumer’s attitude to risk, and whether the Firm’s assessment was in your view a reasonable representation of the Consumer’s ATR. You should also include any information about the consumer’s ATR in relation to this particular investment.
 - (d) This section does not record information on the Consumer’s capacity for loss (which is different to a Consumer’s ATR). This information must be noted in the “Comments on the Consumer’s capacity for loss” box in the “Consumer’s financial situation” section of the template.
 - (e) Where there is evidence that the Consumer’s ATR was wrongly assessed by the Firm, complete the Suitability Section based on your assessment of the Consumer’s ATR.
- (6) **Consumer’s financial situation:** take the following steps:
- (a) Record information on the Consumer’s savings and investments portfolio before and after the Consumer’s investment in the Arch cru Funds in the boxes provided.
 - (b) The Template provides the following categories:
 - Cash (including cash ISAs)
 - Investments
 - Arch cru Funds (this is a drop down menu).
 - (c) When completing the table of the Consumer’s investments take into account the following:
 - Where advice is being provided on a “joint” basis (see above at paragraph 4.1R(3)), record the combined total of e.g. a married couple’s investments. Where advice is on a ‘single’ basis but the Consumer is married or in a relationship include the value of the proportion of investments owned by the Consumer (these will usually in

the Consumer's name). Where the Consumer's share of investments is unclear from the file you can assume the proportion owned by the Consumer is 50%.

- Only include pension policy values where the fund is held in a pension wrapper (e.g. a SIPP or SASS).
 - Where the source of funds is existing investments, use the surrender value of the investments.
- (d) In the "Comments on portfolio before and after sale" box record your observations about the level of diversification within the portfolio and how the advice to invest in the selected Arch cru fund has met the Consumer's investment objectives for their portfolio.

Your comments must include whether the evidence supports an assessment that the risk profile of the Consumer's overall portfolio was suitable given the Consumer's personal and financial circumstances and objectives before and after the advice to invest in an Arch cru Fund. This information will be relevant later in the Template.

- (e) In the "Comments on Consumer's capacity for loss" box record the Firm's comments on the Consumer's capacity for loss (also referred to as the level of risk the Consumer is able to take). This is different to the level of risk that the Consumer was willing, or would have preferred to take. In doing so, consider whether in the light of the Available Evidence:
- the Consumer was able to take any risk with the Consumer's capital or income?
 - what would have been the impact on the Consumer of a total or partial loss of capital?
 - the Consumer could, considering his personal and financial circumstances, afford to take this level of risk?

5 Suitability Requirements

5.1 R The following requirements are specified:

- (1) for a Personal Recommendation made on or before 31 October 2007, *COB 5.3.5R(1)*;
- (2) for a Personal Recommendation made on or after 1 November 2007, *COBS 9.2.1R(1)*;
- (3) the common law duty in contract or tort to exercise reasonable skill and care in advising the Consumer on investments.

- 5.2 G The contract between the Firm and the Consumer may have included a specific term providing that the Firm would exercise reasonable skill and care in advising the Consumer on investments. If it did not do so, such a duty is likely to have been implied into the contract.
- 5.3 G The standard of care under the *FSA rules* and the common law is that of a reasonably competent Firm carrying on a similar business to that of the Firm assessed.
- 5.4 G *COB 5.2* and *COBS 9.2.1R(2)*, *COBS 9.2.2R* and *COBS 9.2.3R* indicate particular matters of which you should take account when assessing whether the Firm failed to comply with the Suitability Requirements. In summary, these are the Consumer's:
- (1) investment objectives;
 - (2) financial situation; and
 - (3) experience and knowledge of investments similar to the recommended Arch cru Fund.

6 Assessing Scheme Cases

General

- 6.1 G The "Suitability Section" in the Template and associated additional provisions in these Instructions contain examples of failure to comply with the Suitability Requirements.
- 6.2 G The Suitability Requirements arise from *FSA rules* and the common law. For the requirements specified, the standards required of the Firm are broadly the same whether their origin is a *rule* or the common law.
- 6.3 R You must in each Scheme Case:
- (1) fairly consider and give appropriate weight to all Available Evidence of the Firm's compliance or non-compliance with applicable Suitability Requirements; and
 - (2) decide whether it is more likely than not that the Firm failed to comply with applicable Suitability Requirements.
- 6.4 R In considering the Available Evidence, you must:
- (1) not assume that a Firm complied with a Suitability Requirement solely on the basis that:
 - (a) the Consumer signed documentation that records his understanding or agreement to matters set out in that documentation;

- (b) the Personal Recommendation was given to a Consumer who had already invested in an Arch cru Fund or a predecessor of that fund;
- (2) give more weight to evidence of the particular circumstances of a Personal Recommendation than to general evidence of selling practices of the Firm or its advisers at the relevant time; or
- (3) determine that an example is present on the “balance of probabilities” when it is more likely than not to have occurred.

Reliance on others

- 6.5 R You must take into account that:
- (1) the duty of a Firm to advise on the suitability of investments cannot be delegated to, or discharged by reliance on, another;
 - (2) where the Firm made a Personal Recommendation in reliance on the advice or opinions of persons other than the Firm, a Firm must not be regarded as complying with the Suitability Requirements because of that reliance; and
 - (3) the Suitability Requirements require a Firm in all cases to form its own view of the suitability of the recommended Arch cru Fund for the particular Consumer based on the information that the Firm had, or ought reasonably to have obtained, regarding that Arch cru Fund and its suitability for the Consumer’s circumstances.
- 6.6 R If in relation to any rating, before coming to a view that the Firm came to a reasonable, albeit erroneous, conclusion on the risks of the recommended Arch cru Fund and sold the Arch cru Fund on this basis, you must take into account:
- (1) that the *FSA’s* guidance on the Responsibilities of Providers and Distributors (“*RPPD*”) for the Fair Treatment of Consumers says that a Firm distributing products:
 - (a) should consider, when passing provider materials to Consumers, whether it understands the information provided;
 - (b) should ask the provider to supply additional information or training where that seems necessary to understand the product or service adequately; and
 - (c) should not distribute the product or service if it does not understand it sufficiently, especially if it intends to provide advice;
 - (2) any due diligence: a Firm providing a Personal Recommendation should have formed its own view on the risks of investing in an Arch cru Fund, based on the information that it had or ought to have

gathered about the fund;

- (3) that the reliance on others rules (*COB 2.3.3R* and *COBS 2.4.6R*) enable a Firm to place reasonable reliance for some purposes on factual (i.e. not opinion-based) information provided by an unconnected *authorised person*; but that these rules do not absolve a Firm from forming its own view on the risks of investing in an Arch cru Fund;
- (4) the features and risks of the recommended Arch cru Fund set out in *CONRED 2 Annex 9R*; and
- (5) that *COBS 2.4.8G* states that “it will generally be reasonable ... for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* ..., unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information”. In the absence of those grounds, it will generally have been reasonable for a Firm to have relied on factual statements provided by Arch or Cru on the Arch cru Funds, such as information about the funds’ underlying assets.

7 Assessing compliance with the Suitability Requirements

- 7.1 R When assessing whether a Firm complied with the Suitability Requirements, you must take into account the following:
- (1) the Consumer’s investment objectives, including his willingness to bear the risks associated with the recommended Arch cru Fund;
 - (2) the Consumer’s financial situation, including his ability, financially, to bear the risks associated with the recommended Arch cru Fund consistent with his investment objectives;
 - (3) the Consumer’s ability, in the light of the following, to understand the risks associated with the recommended Arch cru Fund:
 - (a) the experience and knowledge of the Consumer relevant to an investment in the recommended Arch cru Fund; and
 - (b) any Consumer Communications regarding the recommended Arch cru Fund.
- 7.2 R When assessing the reasonableness of a Firm’s conduct in relation to a Personal Recommendation, you must:
- (1) assess the Firm’s conduct against what was reasonable at the time when the Firm made the Personal Recommendation; and
 - (2) conclude that the conduct of the Firm assessed was reasonable only where that Firm displayed the degree of skill, care and diligence that would at that time have been exercised in the ordinary and proper

course of a similar business to that of the Firm.

Consumer instructions

- 7.3 R In all cases, you must take into account any specific instructions the Consumer gave the Firm about the sale.
- 7.4 G Specific instructions include, for example, where the Consumer asked the Firm to advise only on the sum to be invested, and not on the Consumer's pension arrangements.
- 7.5 G As the Arch cru Funds are high risk investments, the Firm should have asked for further information about the Consumer's wider portfolio, and have taken this into account when making their Personal Recommendation to the Consumer to invest in an Arch cru Fund.
- 7.6 G If there is clear evidence on file that the Consumer has given specific instructions that the Firm is not to review the Consumer's entire portfolio, but to advise on this investment only, the suitability assessment could involve a narrower review, focusing on the Consumer's objectives in relation to the specific amount to be invested. However, any Personal Recommendation should still have taken into account how the specific investment will fit within the Consumer's overall savings and investments portfolio.

8 Suitability Section

Filling in the Suitability Section

- 8.1 G The Suitability Section is used to record your assessment of whether or not the Firm complied with the Suitability Requirements.
- 8.2 R To complete the Suitability Section you must take the following steps for a Scheme Case:
- (1) review the Available Evidence and the information recorded in the Data Sections of the Template;
 - (2) determine whether the Available Evidence shows overall that an Example is present, or not;
 - (3) indicate whether any or all of Examples (1) to (7) is present, or not, by selecting "yes" or "no";
 - (4) conclude, taking into account the Available Evidence, whether the Firm complied with the Suitability Requirements; and
 - (5) insert your commentary on whether or not the Firm complied with the Suitability Requirements, with reference to the Example or Examples that supports your conclusion. Your comments can refer to relevant sections of the fund summary in *CONRED 2 Annex 9R*.

Note in this section these words have the following meaning:

“**Available Evidence**” is information on the Consumer file and any information received from a Consumer.

“**Example**” is a Consumer outcome which tends to show compliance or non-compliance with the Suitability Requirements.

8.3 This table contains *rules, evidential provisions, and guidance* for determining whether the Available Evidence shows overall that an Example is present, or not:

(1) The Consumer was willing to take a high degree of risk with the sum invested

R (1) Compare:

- (a) the Available Evidence and in particular the information recorded in the Data Section of the Template on the Firm’s assessment of the Consumer’s attitude to risk (ATR), focusing on the degree of risk the Consumer was willing to take with this investment (not for the purposes of this question the degree of risk the Consumer was able to take); with
- (b) the high degree of risk a Consumer must have been willing to take for a Personal Recommendation to invest in an Arch cru Fund to be suitable.

E Answer “no” to this question where:

- (1) the Consumer was not willing to take a high degree of risk with the sum invested (by reference to the risk scale used by the Firm); or
- (2) the Consumer was not willing to put his capital at risk for the potential of a higher return and had expressed a preference for lower risk investments.

(2) The risk profile of the Consumer’s overall savings and investment portfolio after the sale was suitable for the level of risk he was willing to take to meet his investment objectives

R Take the following steps:

- (1) refer to the information recorded on the Consumer’s stated attitude to risk in the Data Section of the Template;
- (2) with reference to the Firm’s risk scale, identify the risk level in the Consumer’s portfolio after the sale; and
- (3) compare the level of risk in the Consumer’s overall portfolio after the sale with the level of risk the Consumer was willing to take to meet his investment objectives.

E Answer “no” where the risk profile of the Consumer’s portfolio was higher than the level of risk he was willing to take to meet his investment objectives.

(3) The Consumer’s portfolio was sufficiently diversified after the sale to meet his investment objectives

R Take the following steps:

- (1) refer to the Available Evidence and the information recorded on the Consumer’s investment objectives in the Data Section of the Template;
- (2) identify the concentration of Arch cru Funds in the Consumer’s portfolio after the sale; and
- (3) taking into account in particular:
 - (a) the concentration of Arch cru Funds;
 - (b) the liquidity in the Consumer’s portfolio;
 - (c) the exposure to different asset classes; and
 - (d) the level of stability of returns or security of invested capital in the portfolio;

determine whether the Consumer’s portfolio was sufficiently diversified to meet his investment objectives.

- E (1) Answer “no” where the Consumer has a large portfolio of savings and investments but his preferences regarding risk taking indicate that he would prefer to diversify and invest in a wide range of assets and he has invested a high concentration of his assets in Arch cru and the risk of this investment is not offset by the potential return offered by the Arch cru Funds.
- (2) Answer “yes” where the Consumer wanted a significant portion of his capital to be invested in higher risk or alternative investments and has a low proportion of Arch cru Funds. This may be recorded in specific instructions the Consumer gave the Firm.

(4) The Consumer was reliant on income from this investment

- E (1) Answer “yes” where a Consumer needed a minimum level of income from this fund (for example, to pay household bills and expenses).
- (2) Answer “no” where a Consumer did not need a specific level of

income from the fund, for example, because it was not essential to maintain his standard of living.

- G Whether a Consumer had a need for income from this investment may be reflected in the Available Evidence about the Consumer's household income and whether the income from this investment was necessary for household expenses and personal outlays or whether it was "disposable income" (which is money left over after bills and household expenses are paid).
- G The Arch cru Funds that offered income shares are the Investment Portfolio, Specialist Portfolio and Income Fund. These Funds aimed to pay income on a half-yearly basis.

(5) The Consumer had the capacity to bear the risk of investing [x%] of his savings and investments in the selected Arch Cru fund

- R (1) Take the following steps:
 - (a) refer to the Available Evidence and the information recorded on the Consumer's financial situation in the Data Section of the Template;
 - (b) identify the concentration of Arch cru Funds in the Consumer's portfolio after the sale; and
 - (c) taking into account in particular:
 - (i) the concentration of Arch cru Funds;
 - (ii) the source and extent of the Consumer's assets;
 - (iii) the liquidity in the Consumer's portfolio;
 - (iv) the exposure to different asset classes;
 - (v) the level of stability of returns or security of invested capital in the portfolio; and
 - (vi) the impact the loss of the capital invested would have on his standard of living overall;

determine whether the concentration of Arch cru Funds in the Consumer's portfolio is suitable for his financial situation.

- E (1) Answer "no" where any loss of the investment would have had a materially detrimental effect on the Consumer's standard of living.
- (2) Answer "yes" where the investment was speculative: the Consumer had no need for the capital and would not be using it to maintain his standard of living.

(6) The Firm took reasonable steps to ensure the Consumer had the necessary experience and knowledge to invest in the selected Arch cru Fund

R Take the following steps:

- (1) refer to the Available Evidence and the information recorded on the Consumer's experience and knowledge in the Data Section of the Template;
- (2) identify the Consumer's level of investment experience and knowledge of investments both:
 - (a) in relation to investments similar to Arch cru Funds; and
 - (b) generally;
- (3) identify the steps that the Firm took to establish that the Consumer could appreciate the nature of the risks they were taking with his investment in the Arch cru Fund;
- (4) taking into account in particular:
 - (a) information about the Consumer's existing portfolio and the nature, volume, and frequency of the Consumer's transactions in investments;
 - (b) how long the Consumer had been an investor;
 - (c) the Consumer's experience with and knowledge of high risk investments similar to Arch cru Funds;
 - (d) the Consumer's profession (if any);
 - (e) insofar as it was clear, fair and not misleading, information the Firm gave the Consumer over and above any Capita, Arch or cru produced documentation (if that was provided);
 - (f) how the Firm communicated the risks of investing and the underlying assets in the selected Arch cru Fund listed in *CONRED 2 Annex 9R*; and
 - (g) the overall impression that the Consumer would reasonably have had of those features and risks particularly in the light of:
 - (i) the entirety of the communications referred to in (1);
 - (ii) the extent to which such communications were consistent in their presentation of those features and

risks; and

(iii) the Consumer's relevant experience and knowledge;

conclude whether the Firm had a reasonable basis for believing that the Consumer had the necessary experience and knowledge to understand the risks involved in investing in Arch cru Funds.

E Answer "no" where:

(1) the Firm did not communicate in substance the risks and features of the selected Arch cru Fund listed in *CONRED 2 Annex 9R*; and

(2) one or more of the following is present:

(a) prior to the Personal Recommendation, the Consumer had experience and knowledge of investing in capital protected products only;

(b) prior to the Personal Recommendation, the Consumer had no experience and knowledge of investments in bonds or shares traded on public markets;

(c) prior to the Personal Recommendation, the Consumer had no experience and knowledge of investing in high risk investments.

G A Firm may rely on the Simplified Prospectus to disclose the risks in *CONRED 2 Annex 9R*, but disclosure will not be "clear" if in particular:

(1) the information was contradicted by the Firm in Consumer correspondence; or

(2) given the Consumer's experience and knowledge, it is unlikely that the Consumer would have understood the risks as disclosed in the prospectus without further explanation from the Firm.

(7) The recommendation is not suitable for the Consumer's investment objectives or financial situation for some other reason

R Take the following steps:

(1) refer to the Available Evidence and the information recorded on the Consumer's financial situation in the Data Sections of the Template;

(2) refer to the risks and features of the Arch cru Funds in *CONRED 2 Annex 9R*; and

(3) consider whether there is any reason, other than the reasons at Questions (1) to (6) why the Personal Recommendation to invest in

an Arch cru Fund was unsuitable for the Consumer's investment objectives or financial situation.

E Answer "yes" where:

- (1) the Consumer's financial situation was likely to change in the near future so that they would not be able to bear the risks of this investment;
- (2) the Consumer had existing debts which it would have been in his best interests to repay before making this investment;
- (3) following the Personal Recommendation the Consumer did not have an adequate emergency fund and cash reserve;
- (4) the Consumer would need the money invested within 5 years of investment in the fund;
- (5) any of the risks or features of the Arch cru Fund set out in Appendix 5 were unsuitable for the Consumer's financial situation; or
- (6) an existing product in the Consumer's portfolio could have been changed to meet the Consumer's investment objective with less cost or less risk.

G (1) The features and risks of the Arch cru Fund may have been unsuitable for the Consumer's investment objectives if any of the following applies:

- (a) the Consumer did not want to invest through an offshore vehicle or in non-UK assets;
- (b) the Consumer did not want an investment that did not have a transparent secondary market for its underlying assets;
- (c) the Consumer did not want to invest through collective investment schemes;
- (d) the Consumer was not prepared to put capital at risk in stock markets;
- (e) the Consumer did not want to be exposed to risks associated with commodities or derivatives;
- (f) the Consumer did not want an investment that invests in illiquid assets;
- (g) the Consumer did not want an investment that was exposed to non-traditional asset classes; or
- (h) the Consumer did not want an investment where the Investment Manager employed investment techniques such as

gearing, that would not normally have been used in more commonly encountered UCITS.

- (2) In relation to whether the Consumer's financial situation was likely to change in the near future so that the Consumer would not be able to bear the risks of this investment, consider whether the Consumer was expecting a change in his personal circumstances, such as the birth of a child, redundancy or retirement and the impact this was likely to have on his financial situation.
- (3) In relation to whether the Consumer had existing debts which it would have been in his best interests to repay before making this investment, consider the particular circumstances of the debt, including:
 - (a) the size of the debt (excluding mortgage debt);
 - (b) whether the debt had an early repayment penalty or fixed repayment schedule;
 - (c) the interest rate on the debt in relation to what they could reasonably expect in relation to the performance of the investment.
- (4) An adequate emergency fund should be at least three times monthly outgoings, but depending on the Consumer's circumstances this could be more. The Consumer should also have held sufficient 'cash reserves' to meet known or reasonably anticipated future expenses such as the payment of care fees or spending on home improvements or a new car or dependents.

Outcome: Overall assessment on Suitability Requirements

This relates to paragraph 8.2R steps (4) and (5):

- R Take the following steps to determine whether the Firm complied with the Suitability Requirements:
- (1) review the Available Evidence and the features and risks of the Arch cru Fund in *CONRED 2* Annex 9R;
 - (2) determine whether the Firm took reasonable steps to ensure that the Personal Recommendation was suitable, and select the appropriate outcome "Suitable" or "Unsuitable"; and
 - (3) in all cases insert your commentary on whether or not the Firm complied with the Suitability Requirements, with reference to the Example or Examples that supports your conclusion. Your comments can refer to relevant sections of the fund summary in *CONRED 2* Annex 9R.

- E For the purposes of R(2) above, select “Unsuitable” in any case where you have answered:
- (1) “no” to any of the questions in sub-paragraphs (1), (2), (3), (5) or (6) of paragraph 8.3; and/or
 - (2) “yes” to either of the questions in sub-paragraphs (4) and (7) of paragraph 8.3.

9 Causation Tab

- 9.1 G The Causation Tab is used to record your assessment of whether or not the Firm caused the Consumer to invest in an Arch cru Fund.
- 9.2 R Complete the Causation Tab for those cases where you have concluded that the Firm has failed to comply with the Suitability Requirements.
- 9.3 R To fill in the Causation Tab you must take the following steps:
- (1) review the Available Evidence and the information recorded in the Data Sections of the Template;
 - (2) select the appropriate outcome: “yes” or “no”.
- 9.4 R In assessing the evidence, you must consider the impact of the Firm’s failure or failures on the Consumer’s decision to invest in the Arch cru Fund in all the circumstances of the Consumer’s case.
- 9.5 R Where the Firm has failed to comply with the Suitability Requirements take the following steps:
- (1) review the Available Evidence; and
 - (2) determine whether the Consumer invested in the Arch cru Fund in reliance on the Firm’s unsuitable Personal Recommendation.
- 9.6 E You should conclude “yes” (that a Consumer invested in the Arch cru Fund in reliance on a Firm’s unsuitable Personal Recommendation) unless there is evidence to the contrary.
- 9.7 E You should conclude “no” (that a Consumer did not invest in the Arch cru Fund in reliance on a Firm’s unsuitable Personal Recommendation) only if you are satisfied that the Consumer did not in fact rely on the Personal Recommendation in making the decision to invest.

10 Redress Section

Note that in this section these words have the following meaning:

“CF Arch cru Payment Scheme” is the requirements included in the *permissions* of Capita Financial Managers Limited, BNY Mellon

Trust & Depository (UK) Limited and HSBC Bank plc at their request under section 44 of the *Act* on 31 August 2011.

“**Consumer’s Investment**” is the investment in Arch cru Funds which a Consumer made in a Redress Case.

“**Investment Benchmark**” is an investment benchmark in Annex 8.

“**Redress**” is the amount of redress payable, determined by a Firm in compliance with *CONRED 2.5.2R*.

“**Redress Case**” is a Scheme Case where the Firm’s failure to comply with any of the Suitability Requirements caused the Consumer to invest in an Arch cru Fund.

“**Suitable Investment**” is an investment in which the Consumer would have invested if the Firm had complied with the Suitability Requirements and other requirements applicable to it at the time in the Redress Case.

“**Suspension**” is the suspension on 13 March 2009 of dealings in Arch cru Funds.

- 10.1 R Complete the Redress Section in each Redress Case.
- 10.2 G The Redress Section is used to record your assessment of the Redress payable to a Consumer in a Redress Case and has three parts:
- (1) Part 1 is used to record information on the Consumer’s Investment and the Suitable Investment.
 - (2) Part 2 is used to:
 - (a) record the values of the Consumer’s Investment and the Suitable Investment at [*insert date of calculation*]; and
 - (b) calculate the Redress payable to the Consumer, taking account of these values along with sums paid or payable to the Consumer in respect of the Consumer’s Investment.
 - (3) Part 3 records the Redress payable to the Consumer in the Redress Case.
- 10.3 R You are required to take the following steps for a Redress Case:
- (1) complete Part 1 and 2 of the Redress Section; and
 - (2) calculate the Redress.
- 10.4 R (1) In a Redress Case where the Consumer retained any part of the Consumer’s Investment at the date of Suspension, Redress, in respect of that part, is equal to the sum of $A - B - C - D$.

- (2) For the purposes of (1):
- (a) “A” is the value of sums initially invested by the Consumer in respect of the retained part on [*insert date of calculation*] if they had been invested in a Suitable Investment;
 - (b) “B” is the value of the retained part on [*insert date of calculation*];
 - (c) “C” is the value of distributions received by the Consumer by [*insert date of calculation*] in respect of the retained part; and
 - (d) “D” is the value of sums under the CF Arch cru Payment Scheme that the Consumer is or was eligible to receive (whether or not it has been received) in respect of the retained part.
- 10.5 R (1) In a Redress Case where the Consumer has disposed of any part of the Consumer’s Investment prior to the date of Suspension, Redress, in respect of that part, is equal to the sum of $E - F - G + I$.
- (2) For the purposes of (1):
- (a) “E” is the value of sums initially invested by the Consumer in that part on [*insert date of disposal*] if they had been invested in a Suitable Investment;
 - (b) “F” is the value of distributions received by the Consumer in respect of that part prior to the date of disposal;
 - (c) “G” is the capital realised on the disposal of that part; and
 - (d) “I” is simple interest on the result of $E - F - G$ at the Bank of England base rate prevailing from time to time over the relevant period + 1%/365 for each day between the date of disposal and the date of the *redress determination*.
- 10.6 R In a Redress Case where the Consumer has disposed of part, but not all, of the Consumer’s Investment prior to the date of Suspension, Redress is the sum of the amounts calculated under paragraphs 10.4R and 10.5R.
- 10.7 G Instructions on how to complete the parts of the Redress Section are set out below.
- Redress Section – Part 1*
- 10.8 G The Template will automatically fill in the following data items in the first part of the Redress Section for each of the Consumer’s Investments:
- (1) fund and share class;

- (2) date of investment; and
- (3) date of disinvestment (if applicable).
- 10.9 R In order to complete part 1 of the Redress Section you are required to take the following steps:
- (1) input the number of shares the Consumer held in the Arch cru Fund at the date of the investment;
- (2) input the number of shares the Consumer holds in the Consumer's Investment at [*insert date of calculation*];
- (3) having regard to what would have been a Suitable Investment in the Redress Case either:
- (a) select Investment Benchmark "1", "2", or "3"; or
- (b) select "other"; and
- (4) where you select "other", determine and record the specific investment which you consider to have been a Suitable Investment.
- (5) record in the 'comments box' the reasons for selecting the Investment Benchmark or 'other' Suitable Investment.
- 10.10 E For the purposes of paragraph 10.9R(3), you must:
- (1) have regard to the Investment Benchmarks in *CONRED 2* Annex 8;
- (2) consider which Investment Benchmark best reflects the risks and features of a Suitable Investment; and
- (3) subject to paragraph 10.11R, select that Investment Benchmark.
- 10.11 R You may select "other" only where you are able to identify a specific investment:
- (1) which would have been a Suitable Investment; and
- (2) in which a Consumer could have made an investment at all times from the date on which the Consumer's Investment was made and the [*insert date of calculation*].
- 10.12 G For the purposes of paragraph 10.11R, a Firm might be able to identify a specific investment in circumstances where:
- (1) at the time when the Firm made the Personal Recommendation to the Consumer to invest in Arch cru Funds, the Firm also recommended other specific investments which would have been suitable for the Consumer; or

- (2) the Firm recommended that a Consumer disinvest from a specific investment, which was suitable for the Consumer, in order to invest in Arch cru Funds.

Redress Section - Part 2

Cases where Consumer retains part of the Consumer's Investment

- 10.13 G For each case where the Consumer retains part of the Consumer's Investment, the Template will automatically fill in the following data items in the second part of the Redress Section:
- (1) "B" (the value of the retained part of the Consumer's Investment);
- (2) "C" (distributions);
- (3) "D" (sums for payment of which the Consumer was eligible under the CF Arch cru Payment Scheme (whether or not it has been received)).
- 10.14 G In cases where you have selected an Investment Benchmark the Template will also automatically fill in "A" (the value of the Suitable Investment).
- 10.15 R In cases where, in the first part of the Redress Section, you selected "other", and have recorded a specific investment, you must determine and record at "A" the value which sums initially invested by the Consumer in respect of the retained part would have had on *[insert date of calculation]* if such sums had been invested in that investment.

Cases where Consumer has disposed of part of the Consumer's Investment

- 10.16 G In all cases where the Consumer has disposed of the Consumer's Investment, or a part of it, the Template will automatically fill in the second part of the Redress Section, for each investment, "F" (distributions) and "G" (sums realised on disposal of the Consumer's Investment).
- 10.17 G In cases where you have selected an investment benchmark, the Template will also automatically fill in the current capital value of "E" (the value sums initially invested by the Consumer in the disposed part of the Consumer's Investment would have had at *[insert date of calculation]* if such sums had been invested in a Suitable Investment).
- 10.18 R In cases where, in the first part of the Redress Section, you have selected "other" and have recorded a specific investment, you must determine and record at "E" the value which sums initially invested by the Consumer in the disposed part of the Consumer's Investment would have had at *[insert date of calculation]* if such sums had been invested in that specific investment,

Redress

- 10.19 G Part 3 of the Redress Section of the Template will automatically fill in the

Redress.

2 Annex 8

Investment benchmarks

R The following investment benchmarks apply:

Comparator 1:	this comparator is a return equal to the Bank of England official Bank Rate (the 'base rate').
Comparator 2:	this comparator is a return equal to a 50/50 combination of the APCIMS Conservative Index and the IMA Mixed Investment 20-60% Shares sector. This comparator has a listed equity exposure of 20-60% (IMA) and 32.5% (APCIMS).
Comparator 3:	this comparator is a return equal to a 50/50 combination of the APCIMS Balanced Index and the IMA Mixed Investment 40-85% Shares sector. This comparator has a listed equity exposure of 40-85% (IMA) and 67.5% (APCIMS).

G Further details of the sectors and indices referred to in the *rule* above can be found at the websites of the relevant organisations:

<http://www.apcims.co.uk/private-investor-indices/about-the-indices/>

<http://www.investmentfunds.org.uk/fund-sectors/sector-definitions/>

2 Annex 9R – Risks and Features of Arch cru Funds

- 1 The Arch cru Funds consist of two open-ended investment companies, the Diversified Funds and the Investment Funds, and their respective sub-funds, sold to Consumers during the following periods:

Investment Funds	Investment Portfolio	
	July 2006 to March 2009	
Diversified Funds	Specialist Portfolio	
	July 2006 to March 2009	
	Balanced Fund	September 2007 to March 2009
	Global Growth Fund	September 2007 to March 2009
	Income Fund	September 2007 to March 2009
	Finance Fund	October 2008 to March 2009

- 2 Dealings in the Arch cru Funds were suspended by the Authorised Corporate Director, Capita Financial Managers Ltd (“Capita”), on 13 March 2009.
- 3 The Arch cru Funds aimed to achieve their objectives by investing in a broad range of mainstream and non-mainstream assets.
- 4 The Arch cru Funds, through transferable securities, ultimately invested in the following asset classes, in various combinations:
- (a) unlisted equity;
 - (b) unlisted debt instruments;
 - (c) non-UK investments;
 - (d) venture capital or project finance investments;
 - (e) private markets, private equity, private finance;
 - (f) private and structured finance;
 - (g) asset-backed lending;
 - (h) investments in developing countries;
 - (i) collateralised debt and collateralised cash flow financings;
 - (j) life settlements; and
 - (k) commodities.

(k) commodities.

5 Information about each Arch cru Fund and its sub-funds is set out below.

CF Arch cru Diversified Fund

6 The Diversified Fund was incorporated in June 2002 and originally named “Insinger de Beaufort Manager Selection ICVC”.

7 The Diversified Fund was re-named the CF Arch cru Diversified Funds in mid-2007. The firms involved in the Diversified Fund were:

Authorised Corporate Director (ACD) Investment manager	Capita Arch
Depository	HSBC Bank PLC
Marketing and distribution	Cru Investment Management Limited
Arch Financial Products LLP	

Income Fund

Promotions

8 The Income Fund was promoted to advisers as an investment in the IMA “Cautious Managed” sector and “a strong alternative to cash based investments and bond based investments”.

Features

9 The features of the Income Fund as described to advisers are:

- (a) Its objective is long term capital and income growth.
- (b) It offers both net income and net accumulation shares. For income shareholders, net income was to be distributed half yearly. For net accumulation shareholders, net income was retained and accumulated for the benefit of shareholders and reflected in the price of the shares.
- (c) From October 2007 its aims were to provide returns of cash + 3% per annum from a diversified pool of assets.
- (d) It can invest in a range of assets including:
 - (i) collective investment schemes (which invest principally in equities), transferable securities, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance;

structured finance and commodities.

- (e) From October 2007 the investment classes are described as bonds, equities and other assets to demonstrate low volatility and correlation with equities and bonds to improve diversity.
- (f) Transactions in derivatives will only be used for the purposes of hedging and will not affect the risk profile of the Fund.

Risks

10 It is the FSA's view that an investment in the Income Fund is likely to be high risk, and as such investors must understand and be willing to accept the following investment risks:

- (a) risk to invested capital and return, in general – the risk that the investment may fall in value;
- (b) exchange rate risk – some of the assets are located overseas, and would therefore be affected by exchange rate movements;
- (c) credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
- (d) governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
- (e) liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
- (f) valuation risk – assets not traded on a recognised market can be difficult to value accurately.

Balanced Fund

Promotions

11 The Balanced Fund was promoted to advisers as investment in the IMA “Balanced Managed” sector and:

- (a) may be suitable for investors with a low level risk appetite;
- (b) a strong alternative to cash based investments and bond based investments.

Features

- 12 The features of the Balanced Fund as described to advisers are:
- (a) Its objective is long term capital growth.
 - (b) It offers net accumulation shares.
 - (c) From May 2008 its aims were to provide returns of cash + 4% per annum particularly over the medium term.
 - (d) It can invest in a range of assets including:
 - (i) collective investment schemes (which invest principally in equities), transferable securities, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance; structured finance and commodities.
 - (e) It will have a UK overweight portfolio.
 - (f) Transactions in derivatives will only be used for the purposes of hedging and will not affect the risk profile of the Fund.

Risks

- 13 It is the FSA's view that an investment in the Balanced Fund is likely to be high risk, and as such investors must understand and be willing to accept the following investment risks:
- (a) risk to invested capital and return, in general – the risk that the investment may fall in value;
 - (b) exchange rate risk – some of the assets are located overseas, and would therefore be affected by exchange rate movements;
 - (c) credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
 - (d) governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
 - (e) liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
 - (f) valuation risk – assets not traded on a recognised market can be difficult to value accurately.

Global Growth Fund

Promotions

- 14 The Global Growth Fund was promoted to advisers as an investment in the IMA “Global Growth” sector and:
- (a) may be suitable for investors with a low level risk appetite;
 - (b) delivering decent absolute returns through a broad exposure to the major asset classes;
 - (c) investing in equity and bond funds and also other assets.

Features

- 15 The features of the Global Growth Fund as described to advisers are:
- (a) Its objective is long term capital growth.
 - (b) It offers net accumulation shares.
 - (c) From May 2008 its aims were to provide returns of 6% per annum more than cash returns.
 - (d) It can invest in a range of assets including:
 - (i) collective investment schemes (which invest principally in equities), transferable securities, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance; structured finance and commodities.
 - (e) From October 2007 the investment classes are described as bonds, equities and other assets to demonstrate low volatility and correlation with equities and bonds to improve diversity.
 - (f) Transactions in derivatives will only be used for the purposes of hedging and will not affect the risk profile of the Fund.

Risks

- 16 It is the FSA’s view that an investment in the Global Growth Fund is likely to be high risk, and as such investors must understand and be willing to accept the following investment risks:
- (a) risk to invested capital and return, in general – the risk that the investment may fall in value;

- (b) exchange rate risk – some of the assets are located overseas, and would therefore be affected by exchange rate movements;
- (c) credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
- (d) governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
- (e) liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
- (f) valuation risk – assets not traded on a recognised market can be difficult to value accurately.

Finance Fund

Promotions

- 17 The Finance Fund was promoted to advisers as an investment in the IMA “Cautious Managed” sector and:
- (a) providing “steady returns, low risk”;
 - (b) aiming to beat both cash and bond returns;
 - (c) as a superior investment to cash deposits and bonds.

Features

- 18 The features of the Finance Fund as described to advisers are:
- (a) Its objective is steady capital appreciation over the medium to long term through exposure to a diversified portfolio of private finance related instruments.
 - (b) It offers net accumulation shares.
 - (c) From November 2008 its aims were to provide returns of cash + 3% per annum.
 - (d) From November 2008 the investment category is defined as private finance including bridging finance and term lending.
 - (e) It can invest in a range of assets including:

- (i) collective investment schemes (which invest principally in equities), transferable securities, cash, deposits and money market instruments; and
 - (ii) non-mainstream assets including: private equity; private finance; structured finance and commodities.
- (f) Transactions in derivatives will only be used for the purposes of hedging and will not affect the risk profile of the Fund.
- (g) It will have a UK overweight portfolio.

Risks

19 It is the FSA's view that an investment in the Finance Fund is likely to be high risk, and as such investors must understand and be willing to accept the following investment risks:

- (a) risk to invested capital and return, in general – the risk that the investment may fall in value;
- (b) exchange rate risk – some of the assets are located overseas, and would therefore be affected by exchange rate movements;
- (c) credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
- (d) governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
- (e) liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
- (f) valuation risk – assets not traded on a recognised market can be difficult to value accurately.

CF Arch cru Investment Fund

20 The Investment Fund was incorporated on 29 June 2006. It has two sub-funds: the Investment Portfolio and Specialist Portfolio.

21 The firms involved in the Investment Fund were:

Authorised Corporate Director (ACD) Capita

Investment manager Arch

Depository Bank of New York Mellon Trust and
Depository (UK) Ltd
Marketing and distribution Cru Investment Management Limited

Arch Financial Products LLP

Investment Portfolio

Promotions

- 22 The Investment Portfolio was promoted to advisers as an investment in the IMA “Cautious Managed” sector and “an excellent replacement for cash based and bond based investments.”

Features

- 23 The features of the Investment Portfolio as described to advisers are:
- (a) Its objective is to generate consistent returns to provide wealth preservation and capital appreciation.
 - (b) It offers net accumulation and net income shares.
 - (c) In March 2007 its aims were to provide consistent returns of LIBOR + 4% with a significant focus on risk management, this was revised to cash + 4% in August 2007.
 - (d) From March 2007 investment classes are stated as being public market securities and private investments. In September 2007 it is stated that the premise since inception of the fund was that public markets did not represent sufficient future reward for the fund.

Risks

- 24 It is the FSA’s view that an investment in the Investment Portfolio is likely to be high risk, and as such investors must understand and be willing to accept the following investment risks:
- (a) risk to invested capital and return, in general – the risk that the investment may fall in value;
 - (b) exchange rate risk – some of the assets are located overseas, and would therefore be affected by exchange rate movements;
 - (c) credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
 - (d) governance risk – where equity or debt instruments are not listed on an

exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;

- (e) liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
- (f) valuation risk – assets not traded on a recognised market can be difficult to value accurately.

Specialist Portfolio

Promotions

- 25 The Specialist Portfolio was promoted to advisers as an investment in the IMA “Active Managed” sector and “an excellent replacement for cash based and bond based investments.”

Features

- 26 The features of the Specialist Portfolio as described to advisers are:
- (a) Its objective is “to seek capital growth from an aggressively managed portfolio which may take high cash weightings at times when the investment manager lacks confidence in the outlook for equities, bonds and other asset classes. There is a moderate risk to capital”.
 - (b) It offers net accumulation and net income shares.
 - (c) In March 2007 its aims were to provide consistent returns of LIBOR + 6% with a significant focus on risk management, this was revised to cash + 6% in August 2007.
 - (d) From March 2007 investment classes are stated as being public market securities and private investments which are leveraged up to 25%. In September 2007 the fund is described as having a low correlation with traditional public investments such as bonds and equities.

Risks

- 27 It is the FSA’s view that an investment in the Specialist Portfolio is likely to be high risk, and as such investors must understand and be willing to accept the following investment risks:
- (a) risk to invested capital and return, in general – the risk that the investment may fall in value;
 - (b) exchange rate risk – some of the assets are located overseas, and would therefore be affected by exchange rate movements;

- (c) credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
- (d) governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
- (e) liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
- (f) valuation risk – assets not traded on a recognised market can be difficult to value accurately.

2 Annex 10R Reporting requirements

10.1R Consolidated reporting

Category	Total
Total number of Case Reviews completed	
Total number of outstanding Case Reviews	
Total number of Scheme Cases where a failure to comply with Suitability Requirement found	
Total number of Scheme Cases where a Redress offer has been made following a <i>redress determination</i>	
Total number of cases where a <i>redress determination</i> has not been made due to insufficient information	

Schedule 1 Record keeping requirements

[to follow]

Schedule 2 Notification requirements

[to follow]

Schedule 3 Fees and other required payments

[to follow]

Schedule 4 Powers exercised

[to follow]

Schedule 5 Rights of action for damages

[to follow]

Schedule 6 Rules that can be waived

[to follow]

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(zn) An <i>issuer</i> who proposes to make a material change to the contractual terms of a <i>regulated covered bond</i> under <i>RCB 3.5.4D</i>	
<p>(zo) In the case of <u>persons</u> in respect of which the <i>FSA</i> has given notice of its intention to take, or appoint a competent person to take, any steps under <i>CONRED 2.5.10R</i>, either:</p> <p>i) a Firm (as defined in <i>CONRED 2 Annex 1</i>); or</p> <p>ii) a <i>person</i> falling within <i>CONRED 2.1.2R(1)</i>.</p>	<p>An amount equal to:</p> <p>(1) <u>a sum determined by the number of hours, or part of an hour, taken by the <i>FSA</i> in relation to work conducted in taking steps under <i>CONRED 2.5.10R</i> recorded on the <i>FSA</i>'s systems, multiplied by the rate in <i>FEES 3 Annex 9(11)R</i>; or</u></p> <p>(2) <u>any amount invoiced to the <i>FSA</i> by a competent person in relation to any work carried out by that competent person in connection with its appointment by the <i>FSA</i> under <i>CONRED 2.5.10R</i>.</u></p>	<p><u>Within 30 days of the date of the invoice.</u></p>
...		

Annex C

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Statutory notices and the allocation of decision making

...

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

Section of the Act	Description	Handbook reference	Decision maker
...			
385(1)/386(1)	...		
<u>404A(8)(a)</u>	<u>In connection with a consumer redress scheme, when the FSA is proposing to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a consumer, or what the redress should be in respect of the failure</u>	<u>CONRED</u>	<u>Executive procedures</u>
<u>404A(8)(a)</u>	<u>In connection with a consumer redress scheme, when the FSA is deciding to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a</u>	<u>CONRED</u>	<u>Executive procedures</u>

	consumer, or what <u>the redress should be in respect of the failure</u>		
...			

4 Decisions by FSA staff under executive procedures

...

4.1.7 G *Statutory notice decisions* to be taken under *executive procedures*, and not falling within the responsibility of a *senior staff committee*, will be taken by an individual *FSA* staff member. The decision will be:

-
- (1) made by an executive director of the *FSA* Board or his delegate (who will be of at least the level of associate);

 - (2) on the recommendation of an *FSA* staff member of at least the level of associate; and

 - (3) with the benefit of legal advice from an *FSA* staff member of at least the level of associate₂.

except for decisions made in relation to consumer redress schemes pursuant to provisions of the Consumer Redress Schemes sourcebook (*CONRED*), where (1) will apply, but not (2) or (3).

...

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The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7066 1000 Fax: +44 (0)20 7066 1099
Website: www.fsa.gov.uk

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